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THE AMERICAN  
NOTARY  
AND  
COMMISSIONER OF DEEDS  
MANUAL

THE GENERAL AND STATUTORY REQUIREMENTS OF THESE  
OFFICERS PERTAINING TO ACKNOWLEDGMENTS, AFFI-  
DAVITS, OATHS, DEPOSITIONS AND PRO-  
TESTS, WITH FORMS

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BY  
EDWARD MILLS JOHN  
OF THE CHICAGO BAR

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SECOND EDITION

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# NOTARIES PUBLIC.

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## CHAPTER I.

### THE OFFICE AND ITS REQUIREMENTS.

§ 1. **A notary public** is an officer long known to the civil law, and designated as *registrarius*, *actuarius*, or *scrivarius*. Aneiently he was a scribe, who only took notes or minutes, and made short drafts of writings and instruments, both public and private. At this day, in most countries, a notary public is one who publicly attests deeds or writings, to make them authentic in another country; but principally in business relating to merchants.<sup>1</sup>

Officers whose duties correspond closely to those of Notaries Public are traceable to the Roman Republic, although their duties differ very largely now.

The Frankish kings at an early date appointed them.

In Italy during the Middle Ages they were appointed by the Emperor or the Pope.

In France they have always been important personages, having been appointed by the King and also the Popes.

In Germany they are somewhat proscribed.

In England we learn of them at an early date, having at one time been appointed by the Popes, which right was subsequently denied by the kings who assumed their control. Not until the introduction of "Bills of Exchange" did they become fully appointed in England.

The notary is recognized as a necessary official in nearly all civilized countries. He is recognized by the law merchant, and his official acts are received as evidence, not only in his own, but in all countries. His duties are, often, of

<sup>1</sup> Kirksey v. Bates, 7 Porter 47; Mechem's Public Officers, Sec. (Ala.) 529; Kinney's Law Dictionary, 47.

great variety and importance, consisting for the most part, in protesting inland and foreign bills of exchange, promissory notes, authenticating their dishonor by the refusal of the drawee to accept or pay them on presentation or when due. Also the authentication of transfers to property, administering the oath as to the correctness of accounts or statements of important documents, which are often necessary for transmissions to points where the parties directly in interest are unable to appear in person. The taking of depositions for actions pending in foreign or distant courts. The taking of the affidavits of mariners and masters of ships, their protests, etc., requiring care and judgment. In all such cases the notary's certificate or jurat, when accompanied with his official seal of office and proper certificates of his official character if the act is to be used beyond his own county or State is received as *prima facie* evidence.

This makes the office very important and necessarily one of caution and care, for in most cases the notary is supposed to know the parties with whom he is dealing, he is supposed to know what he is doing, considerate not only of the interests of the parties immediately present, but of the interests of all who shall subsequently be obliged to review or rely upon his work.

§ 2. **The office** is one of greater importance than is generally supposed. Grave complications are likely to arise from a notary's mistakes, making him and his bondsmen liable for damages. If possible he should be familiar with the law, mindful of what are legal holidays, maturing paper and presentment of same for acceptance or payment. He should have a seal and use it on all papers when the statutes requires.

§ 3. **In the United States** the office, powers and duties of notaries are regulated by statute and differ but slightly in the various States and territories. Courts take judicial notice of notaries within the county where the court is sitting.<sup>2</sup>

A notary public is a public officer, so recognized by the common law, the civil law and the law of nations.<sup>3</sup>

<sup>2</sup> *Schaefer v. Kienzel*, 123 Ill. 146; supported by *Governor v. Gordon*, 15 Ala. 72; *Pierce v. Inseth*, 430; *Hertig v. People*, 159 Ill. 237.

<sup>3</sup> *Ohio Nat. Bk. of Washington* 106 U. S. 546, 549.  
*v. Hopkins*, 8 Court of App., D. C.

His duties are principally connected with commercial law, but he has many duties added by statute. A bank acting as collecting agent for its correspondent, in employing a notary in his official capacity, is bound to place the paper in the hands of a competent and careful notary and pay him for his services the legal fee, charging the same to their correspondent.<sup>4</sup>

§ 4. **Eligibility.**—They must be citizens of the State of which they are ministerial officers, usually twenty-one years of age, and of good moral character.

A notary public is a public officer and under the constitution of Nevada, anyone holding a lucrative office under the government of the United States, or any other power, is ineligible to the office.<sup>5</sup>

In some States bankers and persons holding official relations with the bank are incompetent to act as notary in cases where such bank is interested.<sup>6</sup>

§ 5. **Women.**—By the common law no woman under the dignity of a queen could take part in the government of the State, and could hold no office except parish offices. Although a citizen she is not entitled to take any part in the government in the absence of constitutional or legislative provision. Several of the States have removed this restriction by legislative enactment<sup>7</sup> or constitutional provision. Some States have passed enabling acts providing for their appointment.

§ 6. **Appointment.**—In the United States appointment is usually made by the Governor, either with the advice and consent of the senate, or by special legislative enactment. (See State statutes following.)

In England they are appointed by the Court of Faculties and are obliged to serve an apprenticeship of five years, and then furnish a certificate from two notaries stating fitness

<sup>4</sup> *Pierce v. Inseth*, 106 U. S. 546. *State of Ohio v. Grace Adams*, 41

<sup>5</sup> *State v. Clarke*, 21 Nev. 333; *L. R. A. 727*, 58 O. S. 612. Citing *Id.* 18 L. R. A. 313. *State, Robinson v. McKinley*, 37 O.

<sup>6</sup> *Bank v. Butler*, 41 O. S. 519. *S. 627*; *State ex rel. Crow v. Hos-*

<sup>7</sup> *State v. Davidson*, 92 Tenn. 531; *Re House Bill*, 9 Colo. 628; *Opinions of Justices of Sup. Ct. 150* *tetter*, 38 L. R. A. 208; *Id.* 137 Mo. 636; *Barbour-Pitt Shoe Co. v. Dixon*, 60 S. W. 186 (Ky.).

*Mass.* 586; *Id.* 32 L. R. A. 350;

for the office. A penalty is imposed for acting without authority. In London seven years' apprenticeship is required. The duties are similar to those in the United States.

On the continent of Europe they are appointed by the executive.

§ 7. **A commission, or license**, is issued on the filing of the bond and oath of office, for which a fee, varying in each State, is required; this is usually remitted with the application for the appointment. Some States exact an annual fee.

§ 8. **The term of office** is regulated by statute and varies. (See Statutory requirements, following.)

§ 9. **Bond**.—A bond is usually required for a given sum, with sureties, approved by some State officer, usually the secretary of the State, assuring the faithful discharge of the duties of the office and accepting the liability for any damages sustained by parties from negligence or wrongful acts of the notary.

In Louisiana notaries public continue in office so long as they renew their bonds, unless suspended by the court. Failure to file their bond with the auditor of public accounts may be a just cause for their suspension.<sup>8</sup>

§ 10. **An oath of office** is required from notaries in all the States, and is usually attached or noted on their bond.

§ 11. **Duties**.—The duties of the office consist in making public acts requiring publicity, as, presenting for acceptance or payment and protesting for non-payment commercial paper, taking acknowledgments or proofs of deeds and other instruments in writing, taking depositions, affidavits, marine protests and administering oaths. Drawing legal documents, as deeds, mortgages, etc. Their duties and powers are regulated mainly by statute.

§ 12. **Powers**.—Notaries public of the several States, territories and the District of Columbia are authorized to take depositions and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits in the same manner and with the same effect as commissioners of the United States Circuit Court. The statutes of the United States confer no general

<sup>8</sup> Monroe v. Liebman, 47 La. Ann. 155.

authority to notaries public to administer oaths nor as to the manner of administering.<sup>9</sup>

A clerk of the United States courts may take acknowledgments in Illinois.<sup>10</sup>

In Illinois notaries public, although appointed in towns and cities, are county officers, and are not confined to the towns in which they reside. An acknowledgment of a deed can be taken by a notary public anywhere within the limits of the county,<sup>11</sup> or within the State.<sup>12</sup> Courts, ex-officio, take notice of the civil officers of the county in which it holds its sittings.<sup>13</sup>

In attachment cases the affidavit may be made before any officer authorized by the laws of this State to administer oaths. If in the county, seal is not required, but is if outside the county or State.<sup>14</sup> In Tennessee a deed cannot be probated before a notary public by subscribing witnesses; his duty is to take acknowledgments, and the proof by witnesses must be made before the clerk of the County Court.<sup>15</sup> A notary public having acted as agent in obtaining a loan on property for a party is not disqualified from taking the party's acknowledgment to the mortgage on the property.<sup>16</sup> A notary having acted as such for claimant violates no law by acting subsequently in the same matter as the claimant's attorney.<sup>17</sup>

A notary public of another State must certify that he has power to administer oaths; it cannot be presumed.<sup>18</sup> Proof of the official character of a notary public using a notarial seal is not required.<sup>19</sup> The general presumption is that a notary can administer oaths, unless proof to the contrary is offered.<sup>20</sup> In Ohio a notary has power to imprison a witness for refusing to answer a question to a deposition.<sup>21</sup> In Ala-

<sup>9</sup> U. S. v. Hall, 131 U. S. 50.

<sup>10</sup> Woodruff v. McHarry, 56 Ill. 218.

<sup>11</sup> Hill v. Bacon, 43 Ill. 477.

<sup>12</sup> Guertin v. Mombteau, 144 Ill. 32.

<sup>13</sup> Dyer v. Flint, 21 Ill. 80; Thielman v. Burg, 73 Ill. 293.

<sup>14</sup> Rowley v. Berrien, 12 Ill. 198.

<sup>15</sup> McGuire v. Gallagher, 95 Tenn. 349.

<sup>16</sup> Penn v. Garvin, 56 Ark. 511.

<sup>17</sup> Sullivan v. Hall, 86 Mich. 7.

<sup>18</sup> Keefer v. Mason, 36 Ill. 406.

<sup>19</sup> Harding v. Curtis, 45 Ill. 252.

<sup>20</sup> Crone v. Angell, 14 Mich. 339; Pinkham v. Cockell, 77 Mich. 265.

<sup>21</sup> DeCamp v. Archibald, 50 Ohio St. 618; Coleman v. Roberts, 36 L. R. A. 84; Re Huren, 36 L. R. A. 822.

bama he acts as a justice of the peace and can imprison for contempt. He has no such power in Kansas and most of the States.

§ 13. **Acts.**—Generally, their acts can only be impeached on the ground of fraud. Every act is accepted *prima facie* as true, and for that reason, if no other, they are of the most solemn character. Too much stress cannot be placed upon this, for often the office is looked upon as one of slight importance. A notary in Ohio was removed from office and fined for having certified blank receipts for the salary of a public officer, which receipts were subsequently filled out for fraudulent amounts. All documents should be properly filled out and signed by the party acknowledging before the signature of the notary is attached. Also, in case of the acknowledging of deeds, the parties must be known, or their personality declared by attesting witnesses to the officer taking the acknowledgment, and their signature to the paper must be signed in his presence or acknowledged to him. A notary public is an officer known to the law of nations, hence his official acts receive credence, not only in his own country, but in all others in which they are used as instruments of evidence.<sup>22</sup>

The unsupported testimony of a party to a deed that he did not execute it cannot prevail over the official certificate of the officer taking the acknowledgment.<sup>23</sup> A notary cannot be offered in evidence to impeach his own certificate of acknowledgment.<sup>24</sup> The characters N. P. clearly indicate the office of notary public.<sup>25</sup> Courts take judicial notice of the officers of their county, and proof of the official character of these officers is not required.<sup>26</sup>

In Michigan, a notary public, being a State officer, may act in any part of the State; while it is proper for him to sign himself a notary public in and for the county for which he is appointed, his certificate of acknowledgment is not fatally defective if his county is omitted.<sup>27</sup> An officer is not disqualified from acting for parties when he is beyond the fourth

<sup>22</sup> *Kirksey v. Bates*, 7 Porter, Ala. 529.

<sup>23</sup> *Kerr v. Russell*, 69 Ill. 666.

<sup>24</sup> *Shapleigh v. Hull*, 21 Colo. 419.

<sup>25</sup> *Rowley v. Berrian*, 12 Ill. 198.

<sup>26</sup> *Graham v. Anderson*, 42 Ill. 514; *Irving v. Brownell*, 11 Ill. 402.

<sup>27</sup> *Sullivan v. Hall*, 86 Mich. 7, 13

L. R. A. 356.

degree of relationship to the parties.<sup>28</sup> By the universal consent of nations credence is given to the attestation of a notary.<sup>29</sup> As a public officer his office affects the people generally, and does not concern alone a particular district or private individuals. This is shown from the antiquity of the office, nature of their duties, and the fact that their acts have always been respected by the custom of merchants and the courts of all countries.<sup>30</sup> In Louisiana a notary's statement that a will was written by him, as dictated by the testator, in the presence and hearing of the witnesses, whose names are mentioned, and then read by him to the testator in the presence and hearing of said witnesses, at one and the same time, without interruption or turning aside, meets all the code requirements.<sup>31</sup> As an officer *de facto* his acts cannot be collaterally assailed by third parties. If an officer is in his place by appointment or election, and proceeds in the regular discharge of his duties, though he has not in all respects, in qualifying, complied with the statutes, his acts are entitled to credit. The statutes do not declare that the acts of the notary who fails to comply with their provisions shall be null and void, but they provide for a penalty.<sup>32</sup>

He should always state when his commission expires. This neglect does not invalidate his act.<sup>33</sup>

§ 14. A seal is a plate or disc of metal, usually of circular form, having some device engraved upon it, with which an impression may be made on wax or other substance, on paper or parchment, for the purpose of authentication. Of this description are the seals of a government, the seals of courts, of public notaries and other public officers.<sup>34</sup>

Notaries must provide an official seal as required by statute; usually of a certain size, circular in form, having engraved on its surface in the outer circle his name, county and State, and in the inner circle the words "Notary Public." In some States the State coat of arms is also required. With this they

<sup>28</sup> *Churchill v. Churchill*, 12 Vt. 661; *Reed v. Newcomb*, 62 Vt. 75.

<sup>32</sup> *Keeney v. Leas and Lyon*, 14 Ia. 464.

<sup>29</sup> *Spegail v. Perkins*, 2 Rott 274.

<sup>33</sup> *Barbour-Pitt Shoe Co. v. Dixon*, 60 S. W. 186.

<sup>30</sup> *Keeney v. Leas and Lyon*, 14 Ia. 464.

<sup>34</sup> *Hinckley v. O'Farrel*, 4 Blackf.

<sup>31</sup> *Monroe et al. v. Liebman et al.*, 47 La. Ann. 155.

185; *Connolly v. Goodwin*, 5 Cal. 220. *Burrill*.

shall authenticate all their acts. On removal from office this is deposited with an officer designated by statute. In all cases where a seal is necessary by law to any commission, process, or other instrument provided for by the laws of Congress, it shall be lawful to affix the proper seal by making an impression therewith directly on the paper to which such seal is necessary; which shall be as valid as if made on wax or other adhesive substance. (U. S. Rev. Statutes, 1878, Sec. 6.)<sup>35</sup> The impression of the seal on the paper in such manner as to be identified is sufficient.<sup>36</sup>

A notary cannot act until he has procured a seal. His official acts are void unless attested by it.<sup>37</sup> He must authenticate with his official seal, and not with a scrawl.<sup>38</sup> As a general rule, throughout the United States, official acts of a notary must be authenticated by seal as well as by his signature.<sup>39</sup> Some States require it to be attached to the certificate of protest.<sup>40</sup> While in others it is not, the certificate being sufficient evidence of the fact.<sup>41</sup> The notary's certificate of acknowledgment is incomplete without it.<sup>42</sup> Courts take judicial notice of the seals of notaries public, they are officers recognized by the commercial law of the world and are entitled to full faith and credit.<sup>43</sup> But the notary must state in his certificate that he has authority to act to verify the seal.<sup>44</sup> Some States require the notaries of

<sup>35</sup> Rowley v. Berrian, 12 Ill. 198; Beardsley v. Knight, 4 Vt. 471; Tunis v. Withrow, 10 Ia. 305; Hinckley v. O'Farrell, 4 Blackf. 185; Stout v. Slaterry, 12 Ill. 162; Dyer v. Flint, 21 Ill. 80.

<sup>36</sup> Pierce v. Indseth, 106 U. S. 546.

<sup>37</sup> Miller v. State, 122 Ind. 355; Tunis v. Withrow, 10 Ia. 305; Gage etc. v. Dubuque & P. R. Co., 11 Ia. 310; Stephens v. Williams, 46 Ia. 540.

<sup>38</sup> Moore v. Titman, 33 Ill. 358; Hinckley v. O'Farrell, 4 Blackf. Ind. 185; Dumont v. McCracken, 6 Blackf. 355; Booth v. Cook, 20 Ill. 129; Rindskoff v. Malone, 9 Ia. 540.

<sup>39</sup> Clark v. Wilson, 127 Ill. 449.

<sup>40</sup> Kirksey v. Bates, 7 Porter, Ala. 529.

<sup>41</sup> Bank of Ky. v. Pursley, 3 T. B. Mon. 238.

<sup>42</sup> Mason v. Brock, 12 Ill. 273; Rowley v. Berrien, 12 Ill. 198; Thompson v. Scheid, 39 Minn. 102.

<sup>43</sup> Pierce v. Indseth, 106 U. S. 546; Bradner's Evidence, p. 186; Gaynor v. Hibernian Bk., 68 Ill. App. 485; Kruse v. Wilson, 79 Ill. 233; Chiniquy v. Cath. Bishop, 41 Ill. 148; Hertig v. People, 159 Ill. 240; Schaefer v. Kienzel, 123 Ill. 430; Fellows v. Menasha, 11 Wis. 558; Walsh v. Dart, 12 Wis. 635; Sloane v. Anderson, 57 Wis. 123; Ely v. Wilcox, 20 Wis. 523; Hayes v. Frey, 54 Wis. 503; Stoddard v. Sloan, 65 Ia. 680; Wiley v. Carson, 15 S. D. 298.

<sup>44</sup> Smith v. Lyons, 80 Ill. 600.

other States and countries to have their official character certified to by the Clerk of the County Court under the court seal, or by the Secretary of the State under the great seal of the State. The seal authenticates the notary's signature. The Clerk of the County Court may certify to his appointment but not to his signature.<sup>45</sup> The seal of a notary is enough to indicate his official character. Nothing need be written after his signature,<sup>46</sup> providing he states in his certificate that he has authority to act.<sup>47</sup> A notary's acts should always be attested by a notarial seal.<sup>48</sup> He must provide his own official seal. Its use is required to all acknowledgments outside the county or State where the notary resides.<sup>49</sup> Also the officer's name must be subscribed.<sup>50</sup> It is not essential to the validity of a deed that the notary's seal should be attached.<sup>51</sup> The seal is not essential, except in cases required by statute or the common law.<sup>52</sup> Proof of the official character of a notary public using a notarial seal is not required.<sup>53</sup> A notary's signature to his jurat without his seal is sufficient within his county, but not outside.<sup>54</sup> The use of another notary's similar seal instead of the notary's own, does not invalidate the instrument acknowledged, but is a breach of duty.<sup>55</sup> Notaries in taking affidavits need not use their seal if the affidavit is to be used within their county, but for use outside their county or outside the State their seal must be attached.<sup>56</sup> Under the statute of 1867 of Illinois notaries public were not required to authenticate their

<sup>45</sup> *Browne v. Phila. Bank*, 6 Serg. & Rawle 484; *Stephens v. Williams*, 46 Ia. 540.

<sup>46</sup> *Gaynor v. Hibernian Bk.*, 68 Ill. App. 485; *Moore v. Titman*, 33 Ill. 358; *Kruse v. Wilson*, 79 Ill. 233; *Chiniquy v. Cath. Bishop*, 41 Ill. 148; *Hertig v. People*, 159 Ill. 240; *Warvelle's Abstracts*, p. 207, sec. Ed.

<sup>47</sup> *Smith v. Lyons*, 80 Ill. 600.

<sup>48</sup> *Booth v. Cook*, 20 Ill. 129; *Rindskoff v. Malone*, 9 Ia. 540; *Tunis v. Withrow*, 10 Ia. 305.

<sup>49</sup> *Rowley v. Berrian*, 12 Ill. 198.

<sup>50</sup> *Clark v. Wilson*, 127 Ill. 449.

<sup>51</sup> *Robinson v. Robinson*, 116 Ill. 250.

<sup>52</sup> *Schaefer v. Kienzel*, 123 Ill. 430; *Mineral Point R. R. Co. v. Keep*, 22 Ill. 9.

<sup>53</sup> *Harding v. Curtis*, 45 Ill. 252; *Stephens v. Williams*, 46 Ia. 540.

<sup>54</sup> *Stout v. Slattery*, 12 Ill. 162; *Dyer v. Flint*, 21 Ill. 80; *Moore v. Titman*, 33 Ill. 358; *Holbrook v. Nichol*, 36 Ill. 161; *Rowley v. Berrian*, 12 Ill. 198.

<sup>55</sup> *Muncie Nat. Bk. v. Brown*, 112 Ind. 474.

<sup>56</sup> *Dyer v. Flint*, 21 Ill. 80; *Stout v. Slattery*, 12 Ill. 162; *Rowley v. Berrian*, 12 Ill. 198.

jurats to be used within the county for which they were notaries by their official seals.<sup>57</sup> An official seal imparts verity and is universally recognized as evidence of authenticity when accompanied by the notary's statement in his certificate that he has authority.<sup>58</sup> Affixed to an instrument makes it a specialty.<sup>59</sup> The statutes of Nebraska do not require the initials or name of the notary to be engraved on his seal.<sup>60</sup> It is no part of the notary's duty to receive money from or for anybody.<sup>61</sup>

§ 15. **Record.**—They are required to keep a record of many of their official acts, especially the protesting of commercial paper, with service of notice of same, the names of the parties interested and a description of the paper protested.

§ 16. **On removal** from office, by expiration of term, death or otherwise, it is required to deposit with some public officer, usually the clerk of the county, all records and papers of an official character, within thirty days after such removal.

§ 17. **Liability.**—A notary public, by assuming to perform any official duty or request of a party concerned, impliedly undertakes to discharge it faithfully, and is liable to the extent of any resulting injury if he fails to do so. An illustration is where commercial paper is delivered to him for protest and notice to the endorsers, or where he undertakes to certify to the acknowledgment of a conveyance.<sup>62</sup> For any misconduct, negligence or unskillfulness in performance of duty, he is liable for resulting damages. Failure to state that the acknowledging party to a deed was personally known or identified by a witness is negligence. A notary holds himself out to the world as fully capable of discharging the duties of his office.<sup>63</sup> They are liable for negligence in giving in-

<sup>57</sup> Thielmann v. Burg, 73 Ill. 293.

<sup>58</sup> Moore v. Titman, 33 Ill. 358.

<sup>59</sup> Bouvier's Law Dictionary.

<sup>60</sup> Weeping Water v. Reed, 21 Neb. 261.

<sup>61</sup> Heidt v. Minor, 89 Cal. 115; Detroit Sav. Bk. v. Ziegler, 49 Mich. 157; Doran v. Butler, 74 Mich. 643; Feller v. Gates, 91 Am. St. 579.

<sup>62</sup> Cooley on Torts, 466 sec. ed;

Marston v. Bank of Mobile, 10 Ala. 284; Curtiss v. Colby, 39 Mich. 456; Com'l Bank v. Varnum, 49 N. Y. 269; Fogarty v. Finlay, 10 Cal. 239; Oakland Bank v. Murfey, 68 Cal. 455; Ware v. Brown, 2 Bond. 267.

<sup>63</sup> Fogarty v. Finlay, 10 Cal. 239; Joost v. Craig, 82 Am. Stat. 374, 131 Cal. 504, 63 Pac. 840; State v. Ryland, 63 S. W. 819.

sufficient notice of protest.<sup>64</sup> Failure to give notice is a breach.<sup>65</sup> They are liable for negligence to the holder for commercial paper placed in their hands for protest by a bank. The bank is not liable in such cases.<sup>66</sup> They act independently for the owner of the note they protest, and not as agent for the bank placing same in their hands.<sup>67</sup> At common law, formal protest and notice by a notary are only necessary upon foreign bills and notes, and not on inland. When the notary makes the protest and gives the notice, in giving the notice the notary acts as the owner's agent and not officially. This is changed by statute and the act is official, as his certificate or entry upon a book is made evidence, and required. The rights of the parties depend upon the manner in which he discharges his duties. He is selected as a public officer, and failure to discharge his duty is a breach of his bond and renders his bondsmen liable for damages or loss sustained by the party who sought his services.<sup>68</sup> Most of the States positively forbid the attestation or acknowledgment of an instrument by the officer unless he positively knows, or has satisfactory evidence, on the oath or affirmation of credible witnesses, that the person making the acknowledgment is the individual described in and who executed the instrument. A disregard of these requirements renders the officer or his sureties liable for any resulting loss or damage, unless the losing party is the proximate cause.<sup>69</sup> The false or fraudulent certificate of a notary renders the bondsmen liable for the damages sustained. The bond is conditional that the notary will faithfully discharge the duties of his office.<sup>70</sup> The sureties on a notary's bond are liable to the extent of their bond for the official misconduct only. A notary's bond, furnished in compliance with a special law requir-

<sup>64</sup> *Bowling v. Arthur*, 34 Miss. 41.

<sup>65</sup> *Tevis v. Randall*, 6 Cal. 632.

<sup>66</sup> *Bowling v. Arthur*, 34 Miss. 41;  
*Tiernan v. Com'l Bk. of Natchez*,  
7 How. Miss. 648; *Bank v. Butler*,  
41 O. S. 519; *Bank v. Bank*, 49 O.  
S. 351; *First Nat. Bk. v. German*  
*Bk.*, 44 L. R. A. 733.

<sup>67</sup> *Bank v. Butler*, 41 O. S. 519.

<sup>68</sup> *Wheeler v. State of Tenn.*, 9  
*Heisk.* 393, citing *Nicholls v. Webb*,

8 *Wheaton*, 326; *Morgan v. Van*  
*Ingen*, 2 *Johnson* (N. Y.) 202.

<sup>69</sup> *Taylor v. W. P. R. R. Co.*, 45  
Cal. 323; *Bank of Cal. v. West*.  
*Union T. Co.*, 52 Cal. 280; *Oakland*  
*Bank of Savings v. Murfey*, 68 Cal.  
455; *Overacre v. Blake*, 82 Cal. 77;  
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*Joost v. Craig*, 63 *Pac. Rep.* 840,  
82 *Am. St.* 374.

<sup>70</sup> *Doran v. Butler*, 74 *Mich.* 643.

ing it, is a legal bond, which the law forms part of. It is a contract to be strictly construed. The object being to make certain the faithful performance and discharge of all the duties of the office, and in case of his failure to do so, or any loss sustained, the sureties to be held liable. The bond is so conditioned for the protection of all persons employing him professionally. Before he and his sureties can be held it is necessary to determine whether the act done or not done, committed or omitted, was or was not authorized by law and whether injury has been sustained. The liability of the sureties is only on his failure to discharge the duties of his office well and faithfully.<sup>71</sup> Faithful performance of duties voluntarily assumed and carried on for personal profit involves more than mere honesty, it involves care, diligence, attention and reasonable competency.<sup>72</sup> To hold liable the notary or his bondsmen the default must have been the proximate cause of the injury sustained. The measure of damages is the amount of the loss proximately sustained by the default.<sup>73</sup> No damages can be recovered from a notary or his bondsmen for official misconduct or neglect when no damage has been sustained.<sup>74</sup> He is not liable if he acts according to instructions; nor where the owner of the paper, advised of the notary's negligence, omits other proceedings or remedies which would have prevented loss; nor where the owner by his own laches has deprived the notary of the right of subrogation.<sup>75</sup> A bank is liable for the acts of a notary when he acts as its agent.<sup>76</sup> In Louisiana notaries public continue in office so long as they renew their bonds, unless suspended by the court. Failure to file their bond may be just cause for suspension, but the code does not provide for its vacating the office.<sup>77</sup> The law does not authorize notaries to receive money to erase mortgages.<sup>78</sup> The purchaser of property who, without authority, pays the price into the hands of the notary,

<sup>71</sup> *Monrose v. Brocard*, 20 La. Ann. 78; *Lescouzeve v. Ducatel*, 18 La. Ann. 470; *Schmitt v. Widow O. Drouet*, 42 La. Ann. 1064; *Weintz v. Kramer*, 44 La. Ann. 35.

<sup>72</sup> *Id.*

<sup>73</sup> *Mechem's P. O.* § 710, 712.

<sup>74</sup> *McAllister v. Clement*, 75 Cal.

<sup>75</sup> *Mechem's P. O.* § 705.

<sup>76</sup> *Wood River Bk. v. Omaha F. N. Bk.*, 36 Neb. 744.

<sup>77</sup> *Monroe v. Liebman*, 47 La. Ann. 155.

<sup>78</sup> *Monrose v. Brocard*, 20 La. Ann. 78; *Saloy v. Bank*, 39 La. Ann. 90.

incurs the risk of the deposit, and if the notary embezzle the money, the purchaser must sustain the loss.<sup>79</sup> Under the New York statutes a notary public is a public officer, and as such is forbidden by the constitution from accepting any free pass, free transportation, franking privilege, etc., from any person or corporation, or from making use of same while holding his office.<sup>80</sup>

§ 18. **Liability to taxation.**—Authority to tax “trades, occupations and professions” does not authorize a tax on notaries public.<sup>81</sup>

§ 19. **Fees.**—A notary’s fees are all fixed and regulated by law. He has no right to ask more nor less, nor has any person for whom his services are rendered a right to require his services for less than his prescribed fees. A bank employing his services is bound to pay his prescribed legal fees. An assignment by a public officer of his fees or salary before due is contrary to public policy and void.<sup>82</sup> Independent of any corrupt bargain nobody can deal with the fees of a public officer. The law presumes, with reference to an office of trust, that the officer requires the fees assigned him for the purpose of upholding the dignity of the office, and it will not allow him to part with them, or any portion, or to encumber them. It is against public policy and void.<sup>84</sup>

Notaries should charge for their services in every case. The law expects it, and as he is responsible for all his acts he should never hesitate to ask for his fees. Attorneys take a fee for all their affidavits and acknowledgments, especially when executed before the courts. The notary pays for his license, seal, and other official expenses—his fees are his bread

<sup>79</sup> *Brown v. Schmidt*, 7 La. Ann. 146, supported by *Bangs v. Dunn*, 349; *Saloy v. Bank*, 39 La. Ann. 90. 66 Cal. 72; *Schloss v. Hewlet*, 81

<sup>80</sup> *People of the State of N. Y. v. Rathbone*, 145 N. Y. 434, Id. 28 L. Ala. 266; *Bank v. Fink*, 86 Tex. 303; *Beall v. McVicker*, 8 Mo. App. R. A. 384; *People v. Wadhams*, 176 202; *Bliss v. Lawrence*, 58 N. Y. N. Y. (Oct. 6, 1903), 18 Chicago 442.

<sup>81</sup> *Cooley on Taxation*, supported by *New Orleans v. Bienvenu*, 23 La. Ann. 710. <sup>84</sup> *Ohio Nat. Bk. of Washington v. Hopkins*, 8 Ct. App. D. C. 146, supported by *Palmer v. Vaughan*, 3 Swanst. 173; *Parsons v. Thompson*, 1 H. B. 322; *Maguire v. Corwine*, 101 U. S. 108.

<sup>82</sup> *Ohio Nat. Bk. of Washington v. Hopkins*, 8 Court of App. D. C.

and butter, and when he hesitates to charge he lowers the dignity of his office. He should never be so anxious for his fee as to overlook the law and prudence in knowing the identity of his client, otherwise the small fee charged may cost him thousands of dollars. He must be absolutely certain of his client's identity. He cannot afford to take risks or the word of a stranger.

A clerk in a municipal office is entitled to his fees as notary public and not the municipality.<sup>85</sup>

§ 20. **Marine protest** is a declaration by a master of a vessel before a notary, or other proper officer, of the causes of the distress or necessity under which he has been compelled to put into a port not of destination.<sup>86</sup> If any vessel from any foreign port, compelled by distress of weather, or other necessity, shall put into any port of the United States, not being destined for the same, the master, together with the mate or person next in command, may, within twenty-four hours after her arrival, make protest in the usual form upon oath, before a notary public, or other person duly authorized, or before the collector of the district where the vessel arrives, setting forth the cause or circumstances of such distress or necessity. Such protest, if not made before the collector, shall be produced to him, and to the naval officer, if any, and a copy thereof lodged with him or them. The master shall also, within forty-eight hours after such arrival, make report in writing to the collector of the vessel and her cargo, as is directed hereby to be done in other cases. And if it appear to the collector, by the certificate of the wardens of the port, or other officers usually charged with and accustomed to ascertain the condition of vessels arriving in distress, if any, or by the certificate of two reputable merchants, to be named by the collector for that purpose, if there are no such wardens, or other officers duly qualified, that there is a necessity for unloading the vessel, the collector and naval officer, if any, shall grant a permit for that purpose, and shall appoint an inspector to oversee such unloading, who shall keep an account of the same, to be compared with the report made by the master of the vessel.<sup>87</sup>

<sup>85</sup> Wood v. City of Kansas City,  
62 S. W. 433.

<sup>86</sup> Kinney's Law Dictionary, p.  
554.

<sup>87</sup> U. S. Rev. Stat. 1878, Sec. 2891.

§ 21. **Certificate.**—The statutes of many States require every certificate of a notary public to state the date of expiration of his commission. It is directory merely; and the failure of the officer to comply with this provision does not invalidate his certificate, but may cost him his office.<sup>88</sup>

#### STATUTORY REQUIREMENTS.

§ 22. **Alabama**—**ELIGIBILITY**—Citizenship. **WOMEN**, are eligible. **APPOINTMENT**—By the Governor. **COMMISSION**, Fee—None seems to be required. **TERM**—Three years. **BOND**—\$1,000, with sureties approved by the county probate judge. File and record same with him. **OATH**, to be taken. **DUTIES**—To administer oaths, take affidavits, acknowledgments, or proofs, of instruments. Demand acceptance of payment, and protest commercial paper. Give notice of protest, collect delinquent taxes, issue attachments. Determine the offense of cruelty to animals. **SEAL** of office to be procured, with name of notary, office, State and county of appointment. **RECORD**—To be kept of all official acts, and certificates given when required and paid for. **REMOVAL** from office by death, expiration or otherwise, all records and papers to be deposited with the county probate judge within thirty days thereafter under penalty. Removal from the county vacates the office. **CERTIFICATE** under his seal and hand is evidence of facts stated. Justices act when there are no notaries, but they must so state. **FEE BILL**—Collecting taxes, 25 per cent.; acknowledgments, 50c; presentment for acceptance or payment, 50c; protesting, \$1.00; notice of, each, 50c; other protests, \$2.00; oaths, 50c; copies from register, per 100 words, 20c; certificate and seal, 25c; other certificates, 50c.

§ 23. **Alaska**—**ELIGIBILITY**—Resident of the district. **APPOINTMENT** by the Governor for the district. **COMMISSION**, Fee—\$10. **TERM**—Four years. **COMMISSIONERS** appointed by the court to act as notaries, and record kept of all acts. **BOND**—\$1,000. Approved by clerk of his district court. Same with oath and signature to be filed with the secretary of his district. **OATH**, to be taken. **DUTIES**—To demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, protest same for non-acceptance or non-payment, to exercise the other duties of such office accorded by the commercial laws of nations, etc. To take acknowledgment or proofs of deeds and other instruments in writing, attach his certificate to same. Take depositions, affidavits, administer oaths and affirmations, make and certify copies of records of his office. **SEAL**—To provide and keep an official seal with the words engraved thereon, "Notary Public," and his name and name of district for which he is appointed. **RECORD** to be kept of all his acts. **ON REMOVAL** by death or expiration of office, all his records to be filed with the clerk of the district court. Failure to do so subjects him to damages to party injured. **FEES**—

<sup>88</sup> *Harbour-Pitt Shoe Co. v. Dixon* (Ky.), 60 S. W. Rep. 186.

§ 24. **Arizona**—**ELIGIBILITY**—Must read and write the English language. **WOMEN** over 21 years of age are eligible. **APPOINTMENT**—By the governor. **COMMISSION** will issue from the Secretary of State to the district court clerk, who will notify the applicant. Fee, \$2.50. **TERM**—Four years. **BOND**—\$1,000, with sureties approved by the chairman of the board of supervisors. File with County Recorder. **OATH** to be taken before an officer authorized to administer oaths. Within twenty days same to be recorded with district clerk. **DUTIES**—To take acknowledgments or proofs of instruments in writing, affidavits, depositions, oaths and affirmations, demand acceptances or payment, protest commercial paper. **SEAL** to be procured containing "Notary Public," his name and county. Authenticate all acts with same. State expiration of office. Acts received as evidence throughout the State. **RECORD** to be kept of all official acts. **REMOVAL** from office, by death or otherwise, deposit all records and papers with County Recorder within three months, under penalty of from fifty to five hundred dollars. Destruction or defacing records subjects to heavy fine. **JURISDICTION**—In the county of appointment. Oaths and affidavits required to be taken in other States, may be taken before any judge or commissioner of a court of record, master in chancery or notary public authorized, under their official seals. **FEES**—Protesting a bill or note for non-acceptance or non-payment, registering and seal, \$2.00; each notice of protest, 50c; protest in other cases for each 100 words, 20c; certificate and seal to such protest, 75c; taking acknowledgments, etc., 75c; taking acknowledgment of married women, 75c; administering oath or affirmation, 75c; certificates under seal not provided for, 75c; copies of records, certificate and seal, less than 200 words, 75c; if more than 200 words, per additional 100, 20c; all other notarial acts, 50c; deposition of witness per 100 words, 20c; swearing witness to deposition and other business therewith, 75c; acknowledgment to bill of sale, 25c.

§ 25. **Arkansas**—**ELIGIBILITY**—Citizen of the county for which appointed. **APPOINTMENT**—By governor. **TERM of Office**—Four years. **COMMISSION** Fee, \$5.00. **BOND**—\$1,000 with security. **OATH** required. **DUTIES**—To take acknowledgments or proofs of written instruments, depositions, in and out of the State, affidavits, to administer oaths and affirmations. **SEAL**—He must provide a seal of his office, to represent by its impression the emblems and devices presented by the great seal of State, surrounded by the words "Notary Public, County of ———, Ark." All official acts to be authenticated therewith. Must state when his commission expires, on all acknowledgments or jurats. Penalty for omission is \$5.00. **RECORD**—Shall keep a record of all his official acts in a book for that purpose and give a certified copy of any record to any person applying therefor on payment of the fee. **REMOVAL**—All papers and records to be delivered to the County Clerk. Acts received as evidence of the facts stated. **FEES**—For noting for protest, 50c; entering protest, 75c; registering protest, 40c; notice to endorsers, etc., each, 50c; taking acknowledgment, 50c; each marine protest, \$2.00; protest to secure insurance,

\$2.00; copy of record and papers in his office, each 100 words, 5c; each deposition, \$2.00; mileage to and from place to officer's office, per mile, 5c; all fees not to exceed for the day, \$5.00; if more than one day, for each day, \$2.00; for issuing subpoena, 50; for issuing order of arrest, 50c.

§ 26. **California**—**ELIGIBILITY**—Must be a citizen of the United States and of this State, 21 years of age, resident of county for six months. **WOMEN** having these qualifications can be appointed. County officers cannot act, except district attorneys and treasurers. **APPOINTMENT**—By the governor. Commission Fee to State Secretary, \$5.00. **OATH** to be taken. **TERM**—Four years. **BOND**—\$5,000, to be approved by the judge of the County Superior Court. Bond and oath to be filed with County Clerk in twenty days, duplicates with clerk's certificate of these facts to be sent to the Secretary of State in thirty days by the notary. **SEAL**—To provide and keep an official seal, having engraved thereon the arms of the State, the words "Notary Public," and the county for which commissioned. All acts to be authenticated therewith. Same is prima facie evidence of the facts contained therein. **DUTIES**—To take acknowledgment or proofs of instruments in writing in his county. To take depositions, affidavits, administer oaths and affirmations incident to the office or to be used before any court, judge, officer, or board in this State. When requested, to demand acceptance and payment of bills of exchange, or promissory notes, to protest same for non-acceptance or non-payment, to exercise such other powers and duties as by the law of nations and commercial usages, or by the laws of any other State, government, or country, may be performed by notaries. **REMOVAL**, by death, resignation or disqualification, all records must be delivered to the County Clerk within thirty days. **RECORD**—All their official acts, parties to, date, and character of every instrument acknowledged or proved by them. To give certified copies of same when so requested and upon receipt of their fees. **LIABILITIES**—Notary and his sureties liable for his misconduct or neglect to all parties injured, for damages. **FEES**—Protest, \$2.00; notice of, \$1.00; recording same, \$1.00; drawing affidavit, deposition or other paper not herein mentioned, each folio, 30c; taking acknowledgments, etc., for the first two signatures, \$1.00 each; additional signatures, 50c each; administering oath or affirmation, 50c; every certificate, including writing and seal, \$1.00.

§ 27. **Colorado**—**ELIGIBILITY**—Citizenship. **WOMEN**—Not eligible. **APPOINTMENT**—By Governor. **COMMISSION** to be recorded with the County Clerk before entering upon the duties of the office. **TERM**—Four years. **BOND**—\$1,000, same to be approved by the County Clerk. **OATH**—To be taken before entering upon the duties of the office. Bond, and oath endorsed thereon, to be recorded with the County Register of Deeds. **POWERS AND OFFICIAL DUTIES**—Take proofs of acknowledgment of all instruments of writing relating to commerce and navigation, administer oaths, make declarations, protests, and all acts usually performed by notaries in other States and territories. Act only in the county of appointment. **SEAL**—To provide an

official seal, consisting of an impression on paper or wax, setting forth the notary's name and residence. He shall designate in writing the date of expiration of his commission. All official acts to be attested therewith. **RECORD**—Must keep record of all his official acts, and, when required, give certified copies of same upon receiving his usual fee. **REMOVAL**—Within thirty days all papers and records to be deposited with County Register of Deeds. **LIABILITY**—Failure to do so is unlawful, and the aggrieved party may recover damages upon his bond of not less than \$100.00 for each offense, and shall forfeit commission for unfaithfulness in office. **FEES**—Noting for protest, 50c; protesting and record, 75c; notices, each, 50c; certificate and seal, each, 50c; acknowledgments, one, 50c; additional, each, 25c; depositions, per 100 words, 15c; swearing, seal and certificate, 25c; other fees same as justices.

§ 28. **Connecticut**—**ELIGIBILITY**—Citizen—Women are eligible. **APPOINTMENT**—By Governor. **COMMISSION FEE**—\$1.00, half payable to State Treasurer. **TERM**—Two years from February 1. **BOND**—Not required. **OATH**—To be filed with the County Superior Court Clerk. Filing record of commission and oath, recorded with County Superior Court Clerk, who may certify to his authority and official acts. In New London County the record is made by the Clerk of the Court of Common Pleas. The Secretary to give notice of revocation of commission within five days to the Clerk of the County Superior Court. **SEAL**—Not required. **RECORD**—Not required. **REMOVAL**—No statute. **LIABILITIES**—No statute. **JURISDICTION**—Any place in the State. **FEE OF NOTARY**—Marine protest, \$2.00; entering protest of bill or note, or noting without protest, or administering an oath, taking acknowledgment under seal, 50c; noting a bill or note for protest, recording protest, each notice to endorser, etc., 25c; travel, per mile, 10c; oath to a pensioner, 25c; fee of witness, per day, 50c; fee of witness for travel, per mile, 10c; depositions in State, each, \$3.00; depositions out of State, each, \$5.00; acknowledgments, 25c; affidavits, 10c; oaths, out of court, 10c; subpoena, 25c.

§ 29. **Delaware**—**ELIGIBILITY**—A citizen of the United States, to reside in the hundred for which appointed. **APPOINTMENT**—By the Governor. **COMMISSION FEE**—For appointment, \$10; payable to the Secretary of State. **TERM**—Seven years. **OATH**—To faithfully discharge the duties of his office, duly signed and certified, shall be filed with the County Recorder. **DUTIES AND POWERS**—To acknowledge deeds and other instruments. To take the private examination of married women parties to a deed, administer oaths, etc. **DUTIES** notaries public in the City of Wilmington and New Castle. To give notice of the non-acceptance, non-payment and protest of any negotiable instrument, by mail, on the same day in which it was protested, directed to the residence or place of business of the party sought to be charged. The notice to be mailed personally by the notary, to which fact the notary shall make oath or affirmation if necessary. **SEAL**—To have a seal engraved with name of notary, title, date of appointment, anything else desired, term of office. **RECORD** to be kept

of official acts. **REMOVAL** or expiration of office deposit with County Recorder. A notary appointed for a bank, having an official position in the bank, shall cease to act as notary when he ceases to hold his connection with such bank. **LIABILITY** for unfaithfulness in duties. **FEES** allowed—Taking an acknowledgment, \$1.00; taking and certifying an affidavit, 50c; taking depositions, court to allow a reasonable fee.

§ 30. **District of Columbia**—**ELIGIBILITY**—Resident of the district. **APPOINTMENT**—By the President. **TERM OF OFFICE**—Five years. **BOND** for \$2,000 with security approved by the Supreme Court or a Justice thereof. **OATH** of office to be taken. He shall deposit an impression of his seal and signature with the Clerk of the Supreme Court of the District. **DUTIES**—To take depositions, acknowledgments, affidavits and oaths, to demand acceptance and payment of bills of exchange, etc., and to protest the same. They may perform such other acts for use and effect beyond the jurisdiction of the District according to the law of any State, territory or foreign government. **SEAL**—To provide a notarial seal, with which he shall authenticate his official acts. **RECORD**—To keep a fair record of all his official acts, and, when required, to give a certified copy of any record in his office to any person upon payment of the fees therefor. **REMOVAL** by death, resignation or removal from office, all records and official papers to be deposited with the Clerk of the Supreme Court of the District. **LIABILITY**—Any notary taking a higher fee than allowed shall be fined \$100 and be removed from office by the Supreme Court of the District. The original protest of a notary public, under his hand and official seal, of any bill of exchange or promissory note for non-acceptance or non-payment, stating the presentment, service of notice, mode of notice, reputed residence of the party, and the nearest postoffice, same shall be prima facie evidence of facts stated. The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts. Seal and official documents are exempt from execution. **NOTARY'S FEES**—Certificate and seal, 50c; taking depositions, per 100 words, 10c; administering an oath, 15c; taking acknowledgments with certificate, 50c; protesting and recording, \$1.75; each notice of protest, 10c; each demand for acceptance or payment, if accepted or paid, \$1.00. To be paid by the party accepting or paying the same; each noting of protest, \$1.00.

§ 31. **Florida**—**ELIGIBILITY**—Citizen of the United States. **COMMISSION FEE**, \$1.00. **APPOINTMENT**—By the Governor. **TERM**—Four years. **BOND** for \$500, with two sureties, subject to approval of the County Commissioners and Comptroller, which with oath is to be filed with the Secretary of State. **TAKE OATH** for faithful performance of duties. **DUTIES**—To take oaths, acknowledgments, protests, and solemnize marriages. State expiration of commission on all documents. **SEAL**—To procure an official seal for authenticating his acts. **RECORD** to be kept of official acts. **REMOVAL** from or expiration of office, records to be deposited with the County Comptroller. **LIABILITY**

for unfaithfulness. FEES—For protesting bills, notes, etc., \$2.00; noting marine protest, etc., \$2.00; administering oath, 10c; attendance at a demand, tender or deposit and noting, \$1.00; each order for survey, 50c; copying papers necessary, per 100 words, 20c; additional 100 words or fraction, 10c; acknowledgments, 50c; each certificate with seal, 50c.

§ 32. **Georgia**—**ELIGIBILITY**—Citizen of the United States, 21 years old, or an attorney, and of good moral character. **APPOINTMENT**—By the judges of the Superior Courts, in vacation or in term time. **TERM OF OFFICE**—Four years, revocable at any time by the judges. **COMMISSION**—The Clerk issues it and keeps a register of their names. **FEE** for same, \$2.00 in full. **BOND**—None required. **OATH** of office to be taken before the Clerk of the Superior Court, before entering upon their duties, which shall be entered on the minutes of the court, as follows: I, do solemnly swear, (or affirm,) that I will well and truly perform the duties of a notary public for the County of —, to the best of my ability; and I further swear, or affirm, that I am not the holder of any public money belonging to the State, and unaccounted for. So help me God. **DUTIES AND POWERS**—To take acknowledgments relating to commerce and navigation, and to witness such deeds and papers as they are permitted by law. To demand acceptance and payment of commercial paper, or paper entitled to days of grace, to note and protest the same. To certify all official acts when required. To administer oaths which are not required by law to be administered by a particular officer. To exercise all other powers incumbent upon them by commercial usage or the laws of this State. They cannot issue attachments or garnishments, or subscribe affidavits or approve bonds for the same. **JURISDICTION**—The county of their residence and appointment. **SEAL** to be provided for authenticating his official acts, having the impression of his name officially, the name of the State and county of his appointment. No seal is required to his attestation of deeds. **RECORD** to be kept of his official acts signed by him with dates. **REMOVAL** from county vacates office. **LIABILITIES** for excess of charges. **FEES**—Protesting and notice on \$200 or less, 50c; \$200 to \$1,000, \$1.00; \$1,000 to \$3,000, \$2.00; over \$3,000, \$3. Includes noting, protesting and giving notice, copies and all evidence of debt; administering an oath, 30c; attendance on any person to make proof as a notary and certifying same, \$1.00; every other certificate, 50c. The cost of registering is a charge and must be charged in the costs at the same time and paid by the party for whose benefit the noting and protesting was done.

**NOTARIES FOR MILITARY DISTRICTS**.—**APPOINTMENT**—By judges of the Superior Court in their respective circuits at the term of court next preceding the vacancy or at some succeeding term after such vacancy has occurred. Recommendation of to be by the grand juries of each county. **COMMISSIONED** by the Governor. **TERM**—Four years. They are ex-officio justices of the peace. Removable on conviction of malpractice in office. **ACTS**—Bills of exchange, drafts and promissory notes, required by the laws of this State, may be proved

by the certificate of such notary under his hand and seal; certificate must be filed in court at first term and remain until trial. JURISDICTION extends over their districts, and of other districts in certain cases. They may sue or be sued before the other in the district; may preside in any district of their county when the other is disqualified. OATH, before entering on their office, to be taken and subscribed before the ordinary of the county, viz.: "I do swear that I will administer justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully discharge all the duties incumbent on me as a justice of the peace for the County of ———, agreeably to the constitution and laws of this State, and according to the best of my ability and understanding. So help me God.

§ 33. **Hawaiian Islands**—ELIGIBILITY—Citizen of Republic. Cannot be a member of the legislature. APPOINTMENT by the Minister of the Interior. Term until removal. OATH to be subscribed to. SEAL to be procured, having engraved on it his name and "Notary Public," "Hawaiian Islands." BOND—DUTIES—When requested, to enter on record all losses or damages sustained or apprehended by sea or land, all averages, such other matters as by mercantile usage appertain to his office, and cause protest of same. All facts, extracts from documents shall be signed and sworn to by persons appearing for protest. He shall note, extend and record same, grant copies under his signature. Present for payment, etc., and protest, and give notice, of negotiable paper, and other duties usual by usage of merchants, same to be legal evidences. Administer oaths, take depositions. RECORD to be kept of all official acts. FEES—Noting protest, \$2.00 each; notice of, \$2.00; noting any other protest, \$3.00; each notice of, \$3.00; depositions, \$2.00; oath and certificate, 25c.

§ 34. **Idaho**—ELIGIBILITY—An elector and a resident of the county. APPOINTMENT—By Governor. COMMISSION FEE, \$10.00. TERM—Four years. BOND—With sureties for \$1,000, approved by the County Probate Judge. OATH of office to be taken. Bond and oath of office with signature and impression of his official seal to be filed with the Secretary of State. Certificate of the filing under the seal of the Secretary of State must be filed with the Clerk of the County District Court. DUTIES—To demand acceptance and payment of bills of exchange, or promissory notes; to protest same for non-acceptance or non-payment, and such acts as the law of nations and commercial usages require; to take acknowledgments, depositions, administer oaths and affirmations. PROTEST—Under his hand and seal, stating presentment and non-acceptance or non-payment thereof, the service of notice specifying the mode, place of residence of the party and the postoffice nearest to, is prima facie evidence of the facts. SEAL—To provide and keep an official seal having on it "Notary Public" and name of his county. All official acts to be authenticated with same. RECORD of his official acts to be kept by him, and to give certified copies of when requested and paid for. ON REMOVAL, by death, resignation or removal from the county, or disqualification, his records and papers must, within thirty days, be delivered to the County Recorder, who must

deliver them to the notary's successor. A notary having the records and papers of his predecessor may grant certificates or give certified copies with same effect as his predecessor. **LIABILITY**—For official misconduct or neglect the notary and his sureties are liable to the parties injured for all damages. **FEES**—Protesting, \$3.00; serving notice of protest, \$1.00; recording protest, 50c; drawing papers not here provided for, per folio, 30c; taking an acknowledgment, 50c; administering oath, 25c; certificate under seal, 50c.

§ 35. **Illinois**—**ELIGIBILITY**—Twenty-one years of age; a citizen of the United States, and a resident of Illinois for one year. **WOMEN** are eligible. **APPOINTMENT**—By the Governor, with the advice and consent of the Senate. As many as he deems necessary in each county. A petition, signed by fifty legal voters of the city, town, village or precinct where the applicant resides shall be sent with the application. **COMMISSION** fee, payable to the Secretary of State when the application is made, is \$2.00. **TERM OF OFFICE**—Four years, unless sooner removed by the Governor. **BOND**—Payable to the State of Illinois, for \$1,000, with sureties approved by the Governor, conditioned for the faithful discharge of the duties of the office. **OATH** of office to be taken and subscribed to. Oath and bond to be deposited with the Secretary of State. On receipt of commission, same must be recorded in the office of the County Clerk, for which a fee of twenty-five cents shall be paid. **SEAL**—An official seal shall be procured, with engraved words descriptive of the office, the name of the place or county where resident. With this he shall authenticate his official acts. All the above is required before acting. **DUTIES AND POWERS**—To protest commercial paper for non-acceptance or non-payment, and to give written notice of same on the same day of protest to each and every endorser and maker, or within forty-eight hours of the time of such protest; personal notice to be served if within one mile of his office or if town has over ten thousand inhabitants, then service made by mail; take depositions, oaths, acknowledgments. **JURISDICTION**—Can execute the duties of his office throughout the State, while he remains in the same county. **RECORD** to be kept of all protests and notices of same with description of instrument and amount. **ON REMOVAL**, by expiration of office or death, all his official records shall be deposited with his County Clerk. If reappointed to office he shall retain same throughout the term of reappointment. **CERTIFICATE OF MAGISTRACY** can be procured from the Clerk of the county where entry was made under the Clerk's hand and official seal, or can be procured from the Secretary of State, under the great seal of the State. Fee, 25c. All notarial acts of notaries in this State authenticated by seal prior to the passage of the present law are held good and valid. Act of May 1, 1873, S. and C., p. 2818. All certificates of notaries in this State prior to the present law, failing to show the name of city, town or county for which the notary was commissioned, if shown from the certificate to have been performed in this State, are validated. (L. 1869.) S. and C., 1896, Ed. p. 2819. **LIABILITY** for neglect. Where the law imposes an obligation and confers the power to enforce it it

implies a liability for neglect of the obligation. *Gillett v. Ellis*, 11 Ill., 579. **FEES**—For taking acknowledgment of a deed, mortgage, power of attorney, or other writing, with certificate under seal, 25c; for noting a bond or promissory note, or bill of exchange for protest, 25c; for protesting bond or bill of exchange, 75c; for noting protest, 25c; for noting marine protest and furnishing one copy thereof, \$1.00; for extending marine protest and furnishing one copy thereof, \$4.00; each additional copy furnished, \$1.00; for giving notice to drawees and endorsers, each, 25c; for any other certificate under seal, 25c; for administering oath to an affiant, 25c; for taking depositions, for each one hundred words, in counties of first and second classes, 15c; in counties of the third class, 10c.

**§ 36. Indian Territory—ELIGIBILITY**—Citizens. **APPOINTMENT**—By the Governor. **TERM**—Four years. **COMMISSION**—Fee, \$5.00 to Secretary of State. **BOND**—For \$1,000 with approved securities by the County Circuit Court Clerk, same to be filed with the County Recorder of Deeds. **OATH** to be given within ten days of appointment. **SEAL**—To provide same, having engraved on it the emblem of the State seal, surrounded by the words, "Notary Public," "County of ———, I. T.," with which he shall authenticate his official acts. Can use his private seal until official seal is procured. **DUTIES AND POWERS**—To administer oaths, take acknowledgments, depositions,, protest commercial paper, make declarations, take affidavits and certify same under his official seal. Can act in these matters for use in U. S. courts. **JURISDICTION**—County. **RECORD**—To be kept of his official acts and copies supplied when wanted and paid for. **REMOVAL** from office by expiration of term, change of residence, sickness, death or otherwise, records to be delivered to the County Clerk. **LIABILITY**—Misfeasance, perjury, wrong statements, or falsely certifying. **FEES**—Noting protest, 50c; entering protest, 75c; registering protest, 40c; each notice, 50c; acknowledgments, 50c; marine protest, each, \$2.00; protest to secure insurance, \$2.00; copy of records and papers, per 100 words, 5c.

**§ 37. Indiana—ELIGIBILITY**—Upon certificates of good moral character, and qualifications from the judges of the Circuit Courts of the county of the applicant. **WOMEN** are eligible. **APPOINTMENT**—By the Governor. **COMMISSION** Fee, \$1.00. For recording bond, 25c, to Secretary of State and Clerk of Circuit Court. **TERM OF OFFICE**—Four years. Wilfully acting after expiration subject to a fine from \$25 to \$500. **BOND**—To be filed with the Clerk of the County Circuit Court; approval by him for \$1,000. **AN OATH** of office to be taken before entering upon their duties. **POWERS** —To do all acts authorized by the common law and the custom of merchants; to certify acknowledgments, affidavits, depositions; administer oaths. **JURISDICTION**—Throughout the State but not compulsory beyond his resident county. **SEAL**—To procure a seal indicating his official character, with such other devices as he may choose. All acts not attested by such seal to be void. But one protest on bank notes. All the bank notes held or owned by any individual or his lawful attorney on any one day and presented at any bank for protest, shall be, by

the notary public, carefully counted, sealed up in a package, and forwarded to the office of the auditor of State, and shall be entitled to but a single protest. **LIABILITY**—Overcharging and unfaithfulness is a misdemeanor punishable by a fine not exceeding one hundred dollars for each offense and loss of notarial commission. **RECORD** of official acts to be kept. **REMOVAL** or expiration of office, deposit records with County Circuit Clerks. A notary's certificate, attested with his official seal, is presumptive evidence of the facts stated. Applicable to all notaries in the United States. **WHO CANNOT ACT AS A NOTARY**—An officer in any corporation, association or bank in the business of such concerns cannot act as a notary; nor a person holding a lucrative office there. An acceptance of such vacates his office as notary. Jurat must give expiration of his office under a penalty of \$25.00. **FEES**—Certificate and seal, 50c; taking deposition, for 100 words, 10c; administering an oath, 10c; each protest, 50c; each notice of protest, 25c; copying protest, for 100 words, 10c; acknowledgments and seal, 25c; certifying to certificate of parent or guardian, 10c.

§ 38. **Iowa**—**ELIGIBILITY**—Citizen of the United States. **WOMEN**—Not eligible. **APPOINTMENT**—By Governor. **COMMISSION** fee, \$5.00. If satisfactory the commission will issue from the Secretary of State, who will advise the Clerk of the District Court of the County. He will file same for record. Revocation occurring, the Secretary of State will advise the party and the Clerk of the District Court. **TERM**—Three years from July 4. Secretary of State will notify on expiration. **BOND**—For \$500, approved by the Clerk of the County District Court, shall with signature and impression of official seal attached be filed with the Secretary of State. **OATH** of office to be taken. **POWERS** and duties of the office are such as pertain by the custom law of merchants. May take acknowledgments in counties adjoining that of their residence in which a certified copy of their certificate of appointment may be on file with the Clerk of the District Court. **SEAL**—To procure a seal having the words "Notarial Seal," "Iowa," and the notary's name. **RECORD** of all notices sent and to whom sent is required. **REMOVAL FROM OFFICE** or the county, the records of the office are to be deposited with the Clerk of the County District Court within three months under penalty and liability to party injured thereby, Clerk to keep same and give attested copies of when required. **LIABILITY**—Acting after removal or expiration of office, or signing documents when the parties have not appeared before him, shall be fined not less than \$50 and removed from office. **FEES**—Protesting, 75c; registering protest, 50c; being present and noting a demand, tender or deposit, 50c; administering an oath, 5c; certifying to same under seal, 25c; certificate under seal, 25c; other services same as justices of the peace; drawing and certifying an affidavit, 25c; affixing seal, 35c; manuscript of papers under his control, for 100 words, 10c; taking deposition, for 100 words, 10c.

§ 39. **Kansas**—**ELIGIBILITY**—Citizen of the United States. **WOMEN**—Not eligible. **APPOINTMENT**—By Governor. The commission, bond, oath of office, signature and impression of his seal to be

recorded with the Clerk of the County District Court and a fee paid of one dollar. After record the papers to be sent to the Secretary of State with a fee of one dollar for filing the same. TERM of office, four years. BOND to be given with sureties approved by the County District Court Clerk for \$1,000. OATH of office to be taken. DUTIES AND POWERS—To take acknowledgments, administer oaths, demand acceptance or payment of bills of exchange and promissory notes, protest same when required, and to exercise such other powers and duties as required by the law of nations and commercial usage. SEAL—To be procured, containing notary's name and place of residence. All official acts to be authenticated with it. He shall add to his signature the date of expiration of his commission. Neglect of same is a misdemeanor punishable by fine of one hundred dollars. JURISDICTION—County of appointment. A RECORD to be kept of his official acts, certified copies to be given when required, and the customary fee paid. Protests for banks shall be kept in a book provided by the bank for that purpose, the same to be delivered to the bank when removed from office. ON REMOVAL from office by death or otherwise, all official records and papers to be placed on file with the Clerk of the County District Court within thirty days. Limitation of suit against a notary or his sureties is three years after the action accrues. FEES—Protest and recording, 25c; notice of, 10c; certificate and seal, 25c; other services, the same fees allowed District Court Clerk; pension cases, no fee over 15c.

§ 40. **Kentucky**—ELIGIBILITY—Citizen not disqualified from holding another office. APPOINTMENT—The Governor with consent of the Senate to issue commission. COMMISSION—Fee \$2.00. TERM of office, four years. BOND with good sureties to be filed in his County Court for faithfulness. OATH of office to be taken in his County Court before acting, to honestly and diligently discharge the duties of his station. DUTIES AND POWERS—Take acknowledgments, oaths, protest commercial paper. Notice of Dishonor—After protesting, notice of dishonor to be sent to all parties thereto; to fix their liability when their residences are unknown to him, he shall send the notices to the holders. Names of the parties to whom notice was sent shall be stated in the protest, also the time and manner of. JURISDICTION—Named in the commission. SEAL to be procured to authenticate acts. RECORD of protests to be recorded in an indexed book, copies of which, certified by the notary under his official seal, shall be prima facie evidence in all courts of this commonwealth. REMOVAL—By expiration, death, or otherwise, all records of office to be filed with the Clerk of the County Court. The Clerk's certified copies from such records shall be evidence in all the Courts of the State. Date of expiration of commission to be stated on all his certifications. His signature and official seal is sufficient authentication when placed on all instruments required. Vacancies filled by the Governor during the Senate's recess, the appointment to expire at the end of the next session of the Senate. Protests in other States properly certified shall be received as evidence in this State. LIABILITY—A false statement in protest of notices being sent shall be

deemed false swearing, for which he shall be confined in the penitentiary not less than one nor more than five years. Failure to record protests, subject to forfeiture of fee and a fine of five dollars recoverable before any justice of the peace. NOTARIAL FEES—Every attesting, protesting, or taking, acknowledging, and certifying, under seal, 50c; recording same, 75c; notice of protest, each, 25c; administering oath with certificate, 20c.

§ 42. Louisiana—ELIGIBILITY—A male citizen, 21 years of age, resident of the parish five years, to pass examination before the judge of the Supreme, District or Parish Court. In New Orleans, two years' residence, of good moral character and competent. APPOINTMENT—By the Governor with consent of Senate. N. O. parish, not over 175 can be appointed. TERM—Five years or as often as bonds are renewed. BOND—\$5,000 for Orleans parish, \$1,000 for other parishes, with approved security, executed before any District Court Clerk, same with certificate to be filed with auditor of public accounts. Renewable every five years. In New Orleans, \$10,000, with one or more good solvent securities appointed by Judge of New Orleans Civil District Court. OATH—DUTIES—To make inventories, appraisements, partitions, receive wills, protests, matrimonial contracts, conveyances, contracts and instruments in writing; to hold meetings of creditors and families, take acknowledgments, affix seals upon deceased persons' effects, and raise same; to administer oaths. Jurisdiction—Their resident parish. SEAL—To procure seal. RECORD required for protests parties, etc., with facts. Also all deeds to be recorded with register for New Orleans within 48 hours after passage. Acts to be performed in their office unless party prevented. Names—Christian name of married or widowed woman to be given, adding that she is the wife or widow of ——. Christian name and not initials always to be given by notary under penalty of \$100. Registration refused if otherwise. Married women over 21 years can, with husband's consent, renounce their dotal, paraphernalia and other rights in favor of third parties. Sale of property acts can't pass until all taxes are paid. Penalty for violating is \$50 to \$200. Movable property acts to be recorded with parish recorder; also marriage contracts and all acts passed within 15 days. In New Orleans the office to be kept in a brick building, covered with tile, slate or terrace, under penalty. LIABILITY to suspension and damages for malfeasance, failure to record acts. Absence granted by Governor. Custodian of Notarial Records for parish of New Orleans to charge same fees as notaries for copies. FEES—Original writing, per 100 words, 20c; writing by others and passed by notary, 25c; recording same, per 100 words, 10c; certificate and seal, every time, 25c; copies of documents, per 100 words, 10c; proving acts under private signature, 25c; proving same, per 100 words, 10c; certificate to mortgage and seal, \$1.00; and for per 100 words after first 100, 20c; canceling mortgages and seal, \$1.00; seal on effects of deceased persons, \$2.00; swearing appraisers, each, 25c; recording acts of other notaries, per 100 words, 10c; inventories out of office, per hour, 50c (not over 12 hours to be charged); process, verbal, of inventory, per 100 words,

25c; and recording certificate and seal, 25c; inventories in the office, per 100 words, 20c; partitions, per 100 words, and recording, 20c. Receipted fee bill to be given each person when paid.

§ 43. **Maine**—**ELIGIBILITY**—A citizen. **APPOINTMENT**—By the Governor with consent of the council. **COMMISSION** Fee, \$5.00, to be paid before acting. **TERM**—Four years. **BOND** to be given. **OATH** of office to be taken and subscribed to. **DUTIES AND POWERS**—When requested he shall record all losses or damages sustained or apprehended on sea or land, and all averages, and such other matters pertaining to his office; grant warrants of survey on vessels; all facts, extracts from documents and circumstances so noted, signed and sworn to by the parties protesting; he shall note, extend and record the protests made, grant authenticated copies thereof under his signature and official seal when requested and paid for; present any negotiable paper for acceptance or payment to party liable; notify parties thereto; record and certify contracts; take depositions the same as a justice of the peace and quorum; take acknowledgments; administer oaths; certify country products, and do all acts authorized by law and the usages of merchants. **SEAL**—Shall keep a seal having engraved thereon his name, "Notary Public," "Maine," the State coat of arms, or other device, as he chooses. **RECORD**—To record same in a book for that purpose. Acts under his seal and signature shall be received as evidence in all courts. **REMOVAL** by resignation or otherwise, or by death, his records shall, within three months, be deposited with the Clerk of the County Judicial Courts. Neglect forfeits from fifty to five hundred dollars. **LIABILITY**—A wilful destruction, defacing or concealment of records forfeits not less than two hundred nor more than one thousand dollars, and liability for damages to party injured. The penalties provided for one-half accrues to the State, balance to the prosecutor. The Secretary of State shall on the first days of June and December, forward to the Clerks of the State courts, registers of probate courts, judges of municipal and police courts, clerks of the United States courts, and United States pension agents in the State a list of all notaries in the State. **FEE** for protesting, notifying parties and recording, \$1.50; oaths, affidavits, depositions, 20c; writing depositions, per page, 12c; acknowledgments, 20c.

§ 44. **Maryland**—**ELIGIBILITY**—Good character, integrity and abilities, citizens of the United States, resident of this State two years, to be resident in such place designated in the commission. **APPOINTMENT**—By the Governor, with consent of the Senate; two to a county. Not more than fifty to be commissioned for Baltimore City, one to be conversant with the German language. **WOMEN** eligible, six in Baltimore, and one in all except Washington County. **COMMISSION** Fee—Baltimore, \$20. Payable to the Clerk issuing the commission. **BOND** with security for \$6,000 to be given, subject to the approval of the Governor, if the appointment is for Baltimore City, and \$2,000 if for any county in the State. Neglect to give bond within thirty days forfeits the appointment. **OATH**—To be taken and subscribed to before the Clerk of the Superior or Circuit Court. **DUTIES**—To administer

oaths, take acknowledgments, make protests, certified under his seal of office. Any special acts required to be performed in another county. SEAL of office to be procured by the notary for attesting his official acts, having engraved upon it such device as he may desire and the name, surname and office of the notary and his residence. RECORD of all official acts to be kept and certified copies given when required and payment made for. ON REMOVAL by death or otherwise all official records to be deposited with the County Court Clerk within sixty days. If in Baltimore, in the office of the Superior Court Clerk. One-half protest fees to be paid the State Treasurer in the first week of January, April, July, and October, under forfeiture of fifty dollars in each case, providing fees exceed \$350.00 per annum, and in Baltimore \$500.00. The statement of protest fees to be given upon oath. No protest to be signed or issued unless stamped by the Comptroller, under penalty of \$500.00 for each offense, to be recovered by indictment, one-half for the State, balance for the informer. No protests to be rejected as evidence if otherwise admissible. LIABILITY for misfeasance or unfaithfulness in office. NOTARIES PUBLIC FEES—Protesting, \$2.00; drawing proceedings exceeding two sides, 50c; do., per side, 25c; registering or copying proceedings, for every side, 10c; presenting for acceptance, if accepted and not protested, \$1.00; noting for non-acceptance, if not protested, \$1.00; noting a marine protest, \$1.00; affixing seal, 50c; every search where no copy is made, 25c; administering an oath or taking an acknowledgment, 12½c; traveling more than 3 miles, per mile, 20c; each notice mailed or delivered, 5c; presenting and collecting note or bill, \$1.00; other acts in proportion.

§ 45. Massachusetts—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor, with consent of the council. COMMISSION Fee, \$5.00. TERM—Seven years, unless removed. BOND—None required. OATH—Must take within three months after receiving commission. DUTIES—Can administer oaths, take affidavits of banks, protest commercial paper, and give notice of, take acknowledgments, depositions and oaths. Notice to owners of insecure buildings, who live out of the commonwealth, may be served by a notary public, under his official seal. Notaries can be appointed Registrar of Voters and License Commissioners. Jurisdiction in all counties of the State. SEAL—Official seal required. RECORD to be kept of official acts. REMOVAL by any cause, records and papers to be deposited with the County Court Clerk within three months under a penalty not exceeding five hundred dollars. LIABILITY—Knowingly destroying, defacing or concealing such records subjects to a penalty not exceeding \$1,000 and liability for damages. Acting after expiration of office is punished by fine of \$100 to \$500. Must be satisfied as to the identity of party making oath to nomination papers under penalty of \$10 to \$50 for each offense. FEES—Protesting, \$500 or more, \$1.00; protesting, less than \$500, 50c; recording same, 50c; noting, 75c; notice, each, 25c; provided a \$500 or more does not cost over \$2.00; provided less than \$500 does not cost over \$1.50; the noting, recording and notice not to cost over \$1.25. Free list to be posted, statement of same to be made or forfeit three times the amount.

§ 46. **Michigan**—**ELIGIBILITY**—Twenty-one years of age, resident of the county and a citizen of the State. **WOMEN** are eligible. **APPOINTMENT**—By the Governor. **COMMISSION**—On a written application, stating age, and the endorsement of a member of the Legislature, or of the Circuit or Probate Judge of the County, district or circuit where applicant resides, same to be presented to the Governor with a fee of \$1.00 enclosed. **TERM**—Four years. **OATH OF OFFICE** to be taken before the County Clerk and with him filed within ninety days after receiving notice of appointment. On the last days of December, March, June and September the Clerk transmits to the State Treasurer and Secretary of State a written list of all persons and their addresses to whom he has delivered commissions during the quarter; also the date of the filing of their oath and bond. For which applicant pays 50c. County Clerk, if appointed, files his oath with the County Probate Judge. **BOND**—\$1,000, approved by the County Clerk. **DUTIES AND POWERS**—To take acknowledgments of deeds, oaths, affidavits, demand acceptance of bills of exchange, promissory notes, protest same for non-payment or non-acceptance, and such other duties required by the law of nations and commercial usage, other States, government or country. Residence must be in the county for which appointed, but they can act throughout the State. Always state expiration of commission. **SEAL**—To provide a seal to authenticate his acts. **REMOVAL**—When occurring, all official records and papers shall be deposited with the County Clerk within three months under a penalty of \$50.00 or \$200.00. **RECORDS OF THE OFFICE**—To be kept on file by the County Clerk. If previously destroyed or concealed, the party so doing shall forfeit and pay damages to the party injured not exceeding \$500. Attorneys in a case cannot administer oaths when notaries. Acts received as presumptive evidence when under his hand and official seal. **FEES**—Administering oath for pension, etc., to soldiers or sailors, 15c; no fee for administering oath of office to legislators, military or township officers; protest, when necessary by law, 50c; protest, otherwise, 25c; notice of protest, each, 25c; affidavit, per folio, 20c; copy, per folio, 6c; drawing affidavit or other papers not mentioned, per folio, 20c; copying the same, per folio, 6c; taking acknowledgments, etc., 25c for one, 10c add.

§ 47. **Minnesota**—**ELIGIBILITY**—Citizen of the State, 21 years of age. **APPOINTMENT**—By Governor. **COMMISSION** Fee, \$3.00. Record of commission to be made with the Clerk of the County District Court on payment of one dollar. **TERM**—Seven years. **BOND**—\$2,000 with sureties approved by the Governor. **OATH**—Required for faithfulness, etc., which, with the bond, to be filed with the Secretary of State. **POWERS**—Jurisdiction throughout the State while resident of the county for which appointed. To administer oaths, take depositions, certify acknowledgments, receive, make out and record notarial protests, to compel attendance of witnesses. **SEAL**—Must provide with same design on as the State seal, together with the words "Notary Public," size 1½ inches in diameter; also the name of the county where resident. **RECORD** to be kept of protests and notices. **ON REMOVAL**

from office the seal and register to be deposited with the clerk of the County District Court. **LIABILITY**—For acting after expiration of office or for appending signature when parties have not appeared before him, \$100 and removal from office. For overcharging or misfeasance in office. **FEES**—Witnesses, per day, \$1.00; witnesses, travel, per mile, 6c; commission for taking deposition, per folio, 15c; protest, when necessary by law, \$1.00; protest, otherwise, 25c; notice of protest, each, 25c; drawing affidavit, per folio, 20c; copying affidavit, per folio, 6c; administering oath, 25c; taking acknowledgments, 25c; taking deposition, per folio, 15c; recording instrument, per folio, 10c.

§ 48. **Mississippi**—**ELIGIBILITY**—Citizen and belief in a supreme being. **APPOINTMENT**—By the Governor. **COMMISSION** Fee. **TERM**—Four years. **BOND**—For \$2,000 with sureties approved and conditioned by the Board of Supervisors and County Chancery Clerk. **OATH** of office to be taken. Oath and bond to be filed with the Clerk of the County Chancery Court. **DUTIES**—To administer oaths incident to his office, receive proofs or acknowledgments, make declarations, and other matters commercial usage requires, all under official seal. **SEAL**—To be provided, having on the name of the city or town, with that of the State, his name on the margin, and "Notary Public" across the center. All his official acts to be attested with same. **RECORD**—He shall keep a register of all his official acts and give certified copies of same when requested and paid for. **REMOVAL**, by any cause, all official papers and records to be deposited with the County Clerk within thirty days. The Clerk may maintain action for them. **Ex-officio** notaries, justices of the peace, clerks of the Circuit and Chancery Courts, by virtue of their office, can discharge all the duties of notaries and attest their acts by the common seal of office with the same effect. The Board of County Supervisors to provide a notarial seal with the inscription, "Notary Public of the County of ——," around the margin and the image of an eagle in the center, which seal shall be kept in the office of the Clerk of the Circuit Court for the use of ex-officio notaries public. **LIABILITY**—Unfaithfulness in office. **FEES**—Protesting, \$1.00; registering same, 50c; attesting letters of attorney, 50c; affidavit to an account, 50c; oaths, 50c; notarian procuration and seal, \$1.00; certifying sales at auction, 50c; taking proof of debts, 50c; copy of record and affidavit, \$1.00; insurance protest, \$1.00; acknowledgment, 25c.

§ 49. **Missouri**—**ELIGIBILITY**—Age 21 years if male; a citizen of the United States and of this State. **WOMEN** are eligible; 18 years of age. **APPOINTMENT**—By the Governor. **COMMISSION** Fee, \$5.00. **TERM** of office, four years. **BOND**—With two securities for \$2,000. In counties of more than 100,000, \$5,000, approved by the Clerk of the County Court (in St. Louis, by the Clerk of the Circuit Court). Bond and oath shall be filed and recorded with the County Clerk; in St. Louis, with the Circuit Clerk. The bond after recording shall be filed with the Secretary of State. No suit shall be instituted against any notary or his sureties more than three years after action accrued. **OATH** to be taken and endorsed on the commission. **DUTIES**—May administer

oaths and affirmations, take acknowledgments, affidavits, depositions, make declarations and protests, under official seal. Have the power and perform the duties of register of boatman. **SEAL**—Shall provide a notarial seal having on their name, "Notary Public," county or city where resident, and the name of the State. Shall designate in writing, in certificates signed by them, the date of expiration of their commission; shall not change their seal. Shall authenticate all their official acts therewith. **RECORD**—Shall keep a record of their official acts, except those connected with judicial proceedings. **ON REMOVAL** from office, records and papers to be given to successor. **LIABILITY**—Upon the application of any Clerk of a Circuit or Criminal Court of this State the Secretary of State shall send to the Clerk the original bond of any notary when required as evidence in a suit at law or for any indictment, the Clerk to safely keep and return same when suit is determined. Sureties on the bond may be discharged from all future liability by petition in writing addressed to the County Court (in the City of St. Louis to the Circuit Court) by conforming with Sections 4511-4519, Chap. 58, Revised Statutes. **FEES**—Noting for protest, 15c; noting without protest, 35c; entering protest, 35c; registering protest, 35c; notice to each indorser, 15c; travel, per mile, 8c; taking acknowledgments, etc., 50c; marine or fire insurance protest, \$5.00; drawing contract of a boatman, 75c; certificate attested by seal, 50c; entering of a boatman not acting according to contract, 15c; sealing same, 10c; copies of records, etc., per 100 words, 15c; other fees the same as justices of the peace.

§ 50. **Montana**—**ELIGIBILITY**—A citizen of the State and resident of the county. **APPOINTMENT**—By the Governor. May be removed on ten days' notice. **COMMISSION**—Fee, \$5.00. File with County Clerk, fee, 50c; each certificate, 50c. **TERM**—Three years. **BOND**—\$1,000, approved by the County Clerk. Same with oath and signature to be filed with Secretary of State. Fee, \$2.00. **OATH**—Of office to be taken and subscribed to in ten days. **DUTIES**—Demand acceptance, payment of or protest of commercial papers; take acknowledgments, depositions, affidavits; administer oaths, etc.; give certified copies of records in his office when required and paid for. **SEAL**—To provide a seal, having engraved on "Notarial Seal," State, county, and his name. All his official acts to be authenticated with same, except on certificate or oath, or an affidavit, then name and words "notary public in and for — County." Always sign name and office. **RECORD** to be kept of official acts. **ON REMOVAL** from office, official documents, etc., to be deposited with the County Clerk. Liable for neglect to do so. Clerk to furnish certified copies when required and paid for. **LIABILITIES**—With bondsmen, for misconduct and neglect. Attempts at fraud or deception, penalty one to fourteen years. **FEES**—Protesting, \$1.00; notice of protest, \$1.00; recording every protest, \$1.00; affidavit, deposition, per folio, 20c; acknowledgments, \$1.00; additional signature, 50c; oaths, 25c; certifying affidavit with oath, 50c.

§ 51. **Nebraska**—**ELIGIBILITY**—Resident of county. **WOMEN** are eligible. **APPOINTMENT**—By the Governor upon petition of twenty-

five legal voters of the county. COMMISSION—Shall be forwarded to the County Clerk, who shall within five days notify the person appointed of its receipt, the person shall within thirty days execute a bond, deliver it to the Clerk, qualify, and receive his commission. Fee to Secretary, \$1.00; to Clerk, \$2.00; both payable to the County Clerk. TERM—Six years, unless sooner removed. BOND—To be given for \$2,000, with two county resident sureties, or one surety if an incorporated surety company authorized by the State to transact such business. Sureties shall make oath on the bond that they are resident freeholders of the county and are worth at least \$2,000 over all indebtedness and liabilities, and subscribed to before a person authorized to take oaths, who shall attach his certificate. OATH—To be endorsed on the bond, subscribed and certified before an authorized officer. The County Clerk shall file the bond, record the commission, bond, justification of the sureties and oath and send the Secretary of State notice. DUTIES—Within his county, to administer oaths, take depositions, issue summons and punish for refusal to testify, acknowledgments, demand acceptance, payment, or protest and give notice of, and duties customary. His acts and record, certified and sealed over his signature, shall be presumptive evidence in all courts of this State. SEAL—Shall provide a seal having engraved on "Notarial Seal," name of the county, "Nebraska," and, if desired, his name, and the date of expiration of his commission. All his official acts shall be authenticated therewith, including signature, also the date of expiration of office. RECORD of all his protests, and notices of, shall be kept with copy of instrument, except those recorded elsewhere by law. ON REMOVAL, by any cause, or removal from the county, or death, within thirty days he shall enter in his official record a certificate, over his hand and seal, that such record is his official record to the time of expiration of office. Deposit it with the County Clerk. Failure to comply subjects to a forfeit and penalty of \$200. LIABILITY—For any neglect or misconduct in office. FEES—Protest, \$1.00; recording same, 50c; notice of protest, each, 25c; administering oath, 10c; taking affidavit, 25c; taking deposition, each ten words, 2c; certificate and seal, 25c; taking acknowledgments, 50c.

§ 52. Nevada—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor, and varies in each county. COMMISSION—Fee, \$10, to Secretary of State. TERM—Four years, unless removed. BOND—For \$2,000, sureties approved by County District Judge. OATH—To be taken and endorsed on commission. Bond and oath to be recorded with County Recorder. DUTIES—To demand acceptance and payment or protest commercial papers, take acknowledgments on the instrument or attached, depositions, affidavits; administer oaths, proofs, etc. JURISDICTION—The State. SEAL—To provide a seal having engraved on his name, county, initials of the State and words notary public. All official acts to be authenticated with same. RECORD—To be kept of all acts with names of parties, etc. This and seal are exempt from execution. REMOVAL from office by any cause, records to be delivered to the County Recorder within sixty days, or to his successor on the termination of his office. LIABILITY—For neglect or misconduct, with

damages and a fine not exceeding \$2,000, with removal. Certified copies of his records, under his hand and seal, are prima facie evidence in courts of the State. FEES—Drawing and copying protest, \$2.00; serving notice of protest, \$1.00; drawing affidavit, deposition or other paper not provided for, per folio, 30c; taking acknowledgment with seal and certificate, for first signature, \$1.00; additional signatures, each, 50c; administering oath or affirmation, 25c; each certificate including writing and seal, 50c.

§ 53. **New Hampshire**—ELIGIBILITY—Citizen. WOMEN are eligible. APPOINTMENT—By Governor, with advice of the council. COMMISSION Fee, \$1.00. TERM—Five years. BOND—None required. OATH of office to be taken. DUTIES AND POWERS—Protest bills, notes, etc. Same certified under his hand and official seal shall be evidence of the facts stated. In addition, he shall have the same powers as justices of the peace as to depositions, acknowledgments and oaths. REMOVAL—By any cause, within six months, all records, etc., must be deposited with the Secretary of State. Certified copies given when required and paid for. LIABILITY—Refusal or neglect to deliver records on demand, or knowingly destroying or concealing same subjects to a fine not exceeding one thousand dollars, one half for the prosecutor, the other half for the county; also liable for damages for injuries resulting to any person. For overcharging, a fine of fifty dollars each time. FEES—Protesting under seal, 50c; certificate under seal, 25c; waiting on person for payment or witnessing and certifying under seal, 50c; every notice of non-payment, 25c; taking depositions, per page, 17c.

§ 54. **New Jersey**—ELIGIBILITY—Citizenship. WOMEN may act. APPOINTMENT—By the Governor. COMMISSION Fee, \$5.00, to be sent with the application and returned if appointment not made. TERM—Five years. BOND—None required. OATH—To be taken and subscribed to before the County Clerk for faithfulness in office. Fee for same, 50c. POWERS—To protest bills and notes. SEAL—To be procured to authenticate official acts; not required to oaths. RECORDS—To record all bills of exchange or promissory notes, protested by them, the time, place, when, where, upon whom demand was made, with a copy of the notice of non-payment, how served, time, when, if sent, manner, to whom, address, time of mailing and where, name to be signed. ON REMOVAL by any cause, record to be deposited with the County Clerk. Certified copies to be made under their hand and seal when required and paid for. Records of notaries of other States, duly proven copies, shall be received as evidence in any court of this State, notice having been previously given the adverse party. LIABILITIES—For excessive fees and unfaithfulness in office. FEES—Protesting foreign bills, \$1.75; protesting notes and inland bills, each, \$100.00, \$1.50; less than \$100.00, \$1.30. Forfeit for each overcharge, \$25, with cost for collection.

§ 55. **New Mexico**—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. Military posts in the territory may also have a resident notary, appointed by the Governor, who shall be invested with same

powers. COMMISSION—\$5.00; half to Secretary of State, half to Probate Clerk. TERM—Four years. BOND—To be given to the territory for \$500, with two securities, conditioned for faithful performance of his duties. OATH of office to be taken and endorsed on his commission before entering upon his duties. Bond, commission and oath to be recorded with his County Recorder, and the bond filed with the Secretary of the Territory, to be sued upon by any injured party. Suit on bond must be instituted within three years after the cause of action occurs. DUTIES AND POWERS—To administer oaths, affirmations, receive proofs or acknowledgments, make declarations and protests, certify same under their hand and official seal. SEAL—To be procured containing his name, title and county. All acts to be authenticated therewith. RECORD to be kept of all official acts, and certified copies furnished when required and paid for. ON REMOVAL, by any cause, all official papers, etc., to be deposited with the County Probate Court Clerk within thirty days, who will deliver same to the successor. The certificate of a notary, under his official seal, shall be prima facie evidence of the facts. LIABILITY—Any notary public wilfully issuing a false certificate shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, and liable to the party injured. FEE—Protest and certificate, \$2.00; notice of, each, 25c; costs recoverable with the original debt. Oaths, 5c; acknowledgments, 25c.

§ 56. **New York**—ELIGIBILITY—Citizen, to reside where appointed. WOMEN are eligible. APPOINTMENT—By the Governor, by and with the consent of the Senate; 5 to each 1,000 population in the county, but of such number one can be appointed for each bank applying. He can appoint for vacancies during recess of the Senate. FEE FOR COMMISSION—In New York County or Kings County, \$10. In any city having a federal or State enumeration of more than fifty thousand and less than six hundred thousand, \$5. If elsewhere, \$2.50. Neither the Clerk of the City and County of New York, nor of the County of Kings, shall file a certificate of appointment, other than New York or Kings, until \$7.50 is received. COMMISSIONS may be signed by the Governor's private secretary. Removal from office during the term may be made by the Governor, the notary to be given a copy of the charges filed against him and allowed hearing. County Clerk will notify of appointment, upon receipt by him of commission, by enclosing notice in an envelope having the Clerk's address printed thereon. Failure to file oath of office and pay fee within fifteen days after notice or within fifteen days after term of commencement, vacates the office. TERM—Two years from March 30th. POWERS AND DUTIES—Anywhere in the State to demand acceptance and payment, or protest bills and notes, to exercise such powers and duties as the law of nations and commercial usage allow. In the county of his appointment, and elsewhere, to administer oaths, affirmations, take affidavits, acknowledgments, proofs of deeds, etc., certify same. Seal not necessary nor Certificate of County Clerk for admitting same as evidence. Any notary appointed for any county of the State, upon filing in the Clerk's office of any county, his autograph signature and a certificate of the Clerk

of the county, in and for which he is appointed, setting forth the fact of his appointment and qualification as such notary public, may exercise all the functions of his office in the county in which such autograph signature and certificates are filed. Fee for same, \$1.00. The County Clerk where so filed, shall, when requested, subjoin to any certificate of acknowledgment signed by such notary, a certificate under his hand and seal stating the facts of filing, that he is acquainted with the handwriting and believes the signature genuine. Such instrument shall then be entitled to be read in evidence or to be recorded. Protest may be made by a notary public, or by any respectable resident of the place where the bill is dishonored in the presence of two or more credible witnesses, must be made on the day of its dishonor. When a bill has been noted the protest may be subsequently extended as of the date of the noting. SEAL—To procure an official seal for authenticating his official acts. Oaths need not be sealed, nor other acts. RECORD—To be kept of official acts. REMOVAL—On expiration of office, all records to be delivered to their successors. LIABILITY—For accepting a railroad pass. FEES—Notice for non-payment or assessment of tax on mortgages, 75c; protesting, 75c; notice of protest, 10c; not exceeding five, acknowledgments, 25c; each additional, 12c; oaths, 12c. A fee for an affidavit as to child's age under the employment act is illegal.

§ 57. **North Carolina**—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. COMMISSION Fee, \$3.00.—Certificate of commission to be filed with the clerk of the court, who shall note the qualifications of the notary. Clerks of the Superior Courts may act as notaries in their several counties by virtue of their office, and may certify their notarial acts under the seals of their court. TERM of office, two years. BOND—None required. OATH—To take oath of office before the Clerk of their County Superior Court. DUTIES AND POWERS—To take and certify acknowledgment and proofs, depositions, administer oaths, take affidavits, and take the privy examination of femmes covert, verify pleadings in or out of the State. JURISDICTION—Throughout the State. SEAL—None required. RECORD—Not required. REMOVAL—Not required. LIABILITIES—For misfeasance in office. FEES—Certificate and seal, 50c; protesting, \$1.00; acknowledgment of chattel mortgage, 25c; seal and certificate, 10c. (Not applicable to notary at Matthews in Mecklenberg County.) FEES OF JUSTICE OF THE PEACE—Probate of deeds or writing proved by a witness, including certificate, 25c; same executed by a married woman, acknowledged, and examination and certificate, 25c; probate of a chattel mortgage and certificate, 10c.

§ 58. **North Dakota**—ELIGIBILITY—Citizen of the State, of either sex, of electoral age. APPOINTMENT—By the Governor. COMMISSION Fee, \$5.00. Commission to be recorded with the County District Court Clerk, together with signature and impression of official seal. On removal from the county same method to be pursued. TERM—Six years. REMOVAL—By any cause, records and papers to be deposited with the Clerk of the County District Court within three months after vacancy of office, under penalty of \$50 to \$500 and liability to party injured.

**BOND**—For \$500, with sureties approved by the District or County Court Clerk. **OATH** of office to be subscribed to. **DUTY**—To protest bills and notes, etc., and give notice to its maker and indorsers, administer oaths, issue subpoenas, take depositions, and such duties required by law. Service of notice personally or by mail. Oath, bond and impression of seal to be filed with the Secretary of State. **Commission** to be conspicuously posted, also fee bill under penalty. **JURISDICTION**—Throughout the State. **SEAL**—Notary to procure an official seal. **RECORD**—To be kept of all protest notices, time, manner of service, names of all parties, description and amount. **LIABILITY**—Acting when disqualified or for appending official signature to any document when the parties thereto have not appeared before him, is a misdemeanor and on conviction is punishable by a fine of \$100 for each offense and removal from office. **FEES**—Protest notice, postage and 25c; protest, \$1.50; recording same, 50c; taking affidavit and seal, 25c; administering oath, 10c; taking deposition, per ten words, 1½c; certificate and seal, 25c; acknowledgement 25c; witness fees, per day, \$1.00; mileage, per mile one way, 10c.

§ 59. **Ohio**—**ELIGIBILITY**—An elector, a citizen of this State, residing in the county for which appointed, must produce a certificate from a judge of a Common Pleas, Circuit or Supreme Court, that he is of good moral character, a citizen of the county, possessed of sufficient qualifications and ability to discharge the duties of the office; the judge must have personal knowledge of the fact, otherwise the applicant must pass an examination under such rules as the judge may prescribe. No banker, broker, cashier, director, teller, or clerk of any bank, banker, broker, or other person holding any official position to any bank, banker or broker, shall be competent to act as notary in any matter to which said bank, banker or broker is in any way interested. **APPOINTMENT**—By the Governor. **COMMISSION** Fee, \$1.00. Commission, with oath of office endorsed thereon, to be filed for record with the Clerk of the County Court of Common Pleas, and indorsement made on the margin of the record and on the back of the commission the time of its receipt, also a proper index to be made of it. A certified copy of same, under the seal of the court, to be given upon application. Fee for recording and indexing, 40c. **TERM** of office, three years, unless commission is revoked. **BOND**—To be given to the State for \$1,500, with sureties approved by the Governor, to be filed with the Clerk of the Common Pleas Court. **OATH** of office to be taken and subscribed on the commission. **POWERS**—Within their county to administer oaths, take depositions, acknowledgments, make and record protests. If he resides in a city or town situated in more than one county he can protest and record within the limits of such city or town. Protests under the laws of this or any other State accompanying a bill or note protested by such notary shall be held and received as prima facie evidence of the facts. It may be contradicted by other evidence. **SEAL**—To be provided by the notary before acting. It shall be not less than 1¼ inches in diameter and surrounded by the words "Notarial Seal, ——— County, Ohio." (Insert name of county.) **REGISTER** to be provided by the notary, in which every certificate of protest and note

shall be recorded. **REMOVAL**—Seal and register are exempt from execution, and upon the death, expiration of office without reappointment, or removal from office, the register shall be deposited in the office of the County Recorder. **LIABILITY**—Acts done after expiration of term are valid. Knowingly performed, shall forfeit any sum not exceeding five hundred dollars, recoverable in the name of the State. Such an act renders the notary ineligible to reappointment. Excess of legal charges, or unfaithfulness or dishonesty in office, on complaint filed and substantiated in the County Common Pleas Court, subjects the notary to removal from office by the court and the fact reported to the Governor, and renders the party thereafter ineligible to office. **FEES**—Protesting, demand, notices, on each bill or note, \$1.00, and expenses for going beyond the limits of the city or town; recording same, per 100 words, 10c; taking acknowledgments, 40c; taking affidavits, 40c; taking oaths, 40c; taking depositions, per 100 words, 10c; issuing subpoena, 25c; pension oaths, 10c; certifying claim against an estate, 25c.

§ 60. **Oklahoma**—**ELIGIBILITY**—Citizenship. **APPOINTMENT**—By Governor. **COMMISSION**—Fee, \$1.00 to Secretary, \$1.00 to County Clerk. **TERM**—Four years. **BOND**—\$1,000, with sureties approved by the County Clerk. **OATH** of office to be taken. Commission, oath, bond, impression of seal and signature to be filed with the County Clerk and Secretary of State. **DUTIES**—Take acknowledgments, administer oaths, demand acceptance or payment, and protest commercial paper, and such acts as commercial usage requires. **SEAL**—To provide such, containing his name and residence, and authenticate acts with, adding date of expiration of office. **REGISTER**—To be kept of his official acts, and certified copies given when required and paid for. Special record to be kept of protests for banks and delivered to them on removal from office. **REMOVAL**, by any cause, all official books and papers to be deposited with County Clerk. **LIABILITY**—For failure to add date of expiration of commission, fine not exceeding \$50. Limitation of action, three years after cause accrues. **FEES**—Protest and record of, 25c; each notice of, 10c; certificate and seal, 25c; acknowledgments, 25c; affidavits, 25c; other fees same as Clerk of the District Court. No fee allowed for administering any oath or giving certificate to a discharged soldier or seaman, or widow, orphan or legal representative thereof, for pension, bounty or back pay, nor for any voucher required for periodical dues. Penalty for violating, ten to twenty-five dollars.

§ 61. **Oregon**—**ELIGIBILITY**—Citizenship. **APPOINTMENT**—By the Governor. **COMMISSION**—Fee, \$2 to Secretary of State, and \$1 to County Clerk for recording. Record appointment with the County Clerk, fee \$1.00. He shall certify the official character of the notary when required. **TERM**—Two years. **BOND**—To be given to the Governor for \$500 with surety. **OATH** of office to be taken before acting. **DUTIES**—To protest commercial paper and give notice of same to parties in interest immediately. Service to be personal, provided they reside within two miles of the notary, otherwise service by mail. To take acknowledgments and administer oaths. Full faith given to their acts.

**JURISDICTION**—Throughout the State. **SEAL**—To be provided and an impression of it with oath and bond to be deposited with the Secretary of State. **RECORD**—To be kept of all notices, manner and time of service, names of parties, description and amount of the instrument, same to be competent evidence in all courts of this State. **REMOVAL** from office by death, etc., the records shall be deposited with the County Clerk within 90 days, who shall keep same and give certified copies when required. **LIABILITY**—A forfeit of from fifty to five hundred dollars for failure, or for wilful destruction, defacing or concealing of same, and damages to party injured. **FEES**—Protesting, \$1.00; attesting instrument and seal, \$1.00; noting, \$1.00; registering protest, \$1.00; affidavit and seal, \$1.00; acknowledgment, \$1.00; proofs, per folio, 25c; depositions, per folio, 25c; oaths, administering, 25c.

§ 62. **Pennsylvania**—**ELIGIBILITY**—Of good character, integrity and ability. To reside where designated one year. Resident of the State two years. A stockholder, director, or clerk in a bank or banking institution or in its employ, are eligible. Residence may be in a different part of the county, or adjoining county, provided an office is kept where the commission names. **WOMEN** twenty-one years of age and citizens of the State can act. If one marry while in office must return Governor her commission with married name, before performing any notarial act; he will return a new commission without fee. A new bond with security required. **APPOINTMENT**—By the Governor. **COMMISSION**—Fee, \$25.00. Treasurer's receipt to be shown before appointment, except when reappointed after recess of Senate. If disqualification forbids, a commission money paid will be refunded on a certificate of the facts, indorsed by the Governor. **TERM**—Four years. If appointed during recess of Senate, the commission expires at the end of the next session of the Senate, unless confirmed by the Senate, which entitles to a commission for four years from confirmation. **BOND** and two sureties to be given, approved by the Governor, same to be recorded in office for recording of deeds within the county. Subject to be sued on by parties injured. **OATH**, or affirmation to be taken and subscribed to for the faithful performance of all duties and the State constitution before acting. **POWERS**—To administer oaths incident to their office, to take acknowledgments or proofs of instruments in writing, to make declarations, to protest, to take depositions and affidavits. **ACTS** performed outside of the county are valid. Expiration of office to be stated on every certificate and act. **SEAL**—Secretary of State to procure a seal at the expense of the notary. Device same as on the great seal of the State, with the name of the county. **REGISTER**—To be kept of all their official acts and certified copies given when required and fee paid. **ON REMOVAL** from office for any cause, must within ten days, deposit register and official papers with the County Recorder, who shall give certified copies of same when required and paid for. Same, certified under his official seal, shall be evidence in all cases when required. **LIABILITY**—Failure or neglect to so deposit, subjects to forfeiture and payment of \$100.00, and the further sum of \$100.00 for each ten days negligent thereafter, recover-

able for the use of the party suing, and shall be liable in damages to persons injured. The Recorder may bring action for the register and papers. Their official acts, protests and attestations, certified according to law under their hands and seals of office, may be received in evidence, provided other parties may contradict same by other evidence.

**TAX**—In making up the State tax they shall deduct from the amount due the State the true, legitimate expenses of their offices. In Philadelphia they shall pay annually five per cent. of their gross receipts in lieu of other taxes. Returns made under oath annually on or before the 31st day of December. A refusal or neglect of thirty days forfeits their commission. Justice of the peace can act as a notary in Delaware County. The acts of foreign notaries, in accordance with the laws of their country, shall be prima facie evidence of the matters set forth. The consul or vice-consul of the United States at or near the notary's residence shall certify (under) his seal that such notary is a proper officer and acts are in accordance with the laws of the country. **FEES**—Certificates of copy ready made, 50c; comparing same, per 100 words, 7c; certificates of sales at auction, 50c; taking proof of debts to be sent abroad, proof and acknowledgment of letters of attorney for receiving and transferring public securities, 50c. In Allegheny County—Making demand for payment, 50c; protesting same, 50c; registering protest, 50c; each notice, exceeding two, 10c; oaths or affirmations, writing and certifying, \$1.00; probate to bill or account and certifying, 50c; acknowledgments, 25c; depositions, first page, folio cap, \$1.00; depositions, each additional page, folio cap, 75c; marine protests, with affidavits, certificates, seal, etc., \$10.00; protesting, registering, etc., \$1.00; affidavit, 25c; attesting letter of attorney, 50c; registering foreign sea protest, \$1.00; registering copy of each protest, 12c; registering foreign bill protested and certificate, 50½c; registering protest of a bill of exchange or promissory note for non-acceptance or non-payment, 25c; entering or noting sea protest to be deducted from the legal charge for the protest if extended, \$1.00; noting a bill of exchange, note or thing properly protestable, 37½c; drawing and taking proof of the acknowledgment of a bill of sale, bottomry, mortgage, or hypothecation of a vessel or charter party, \$1.00; certifying power of attorney, 25c; drawing and certifying affidavit, \$1.00; oath or affirmation, 12½c; notarial procuration under seal, 75c; letter of attorney, for transferring stock, etc., and certifying same, 50c; drawing and taking acknowledgment or proof of substitution to a letter of attorney, \$1.00; being present at demand, tender or deposit, and noting same, 50c.

§ 63. **Philippine Islands**—Spanish notaries already acting continue in office. **FEES**—Protesting, 75c; registering, 25c; attesting letters of attorney and seal, 25c; affidavits, 25c; oaths and affirmations, 25c; proof of debts to be sent abroad, 25c; writing affidavit and deposition, 5c each 100 words; certified copy of record and affidavit of its contents, 50c; acknowledgments, 25c.

§ 64. **Porto Rico**—**ELIGIBILITY**—Lawyers presenting certificates of good moral character, a citizen of Porto Rico or the United States, of legal age—male. **APPOINTMENT**—By Supreme Court on examination.

TERM—FEE—\$1.00. BOND for good character. SEAL—DUTIES—Send protocol each month to Clerk of Supreme Court. Documents requiring tax must show treasurer's receipt before making certificates to them. RECORD—To be kept, and open for inspection. REMOVAL—To send books and papers to Clerk of Supreme Court. LIABILITIES for not sending protocol each month to Clerk of Supreme Court, \$300.00. Suspended from office on second occurrence. JURISDICTION—No limitation. Documents may be written in English when notary and parties know that language.

§ 65. Rhode Island—ELIGIBILITY—A citizen. APPOINTMENT—By the Governor. COMMISSION—Within thirty days after its date, party shall deliver to the Secretary of State a certificate that he has been duly engaged thereon, signed by the persons for whom such engagement shall have been taken. Failure to do so forfeits the appointment. Fee for same, \$2.00. TERM of office, one year. After expiration of office, if not reappointed, he may continue to act thirty days after the first day of July in each year. BOND—None seems required. OATH—Of office to be taken for faithful performance of duties. DUTIES—Protest bills and notes, take acknowledgments and depositions, and matters within their office. Issue subpoenas. No protest shall be made by any notary who is the president, cashier, director, clerk or agent of any bank or institution for savings, wherein such note, draft or check has been placed for collection or discount. SEAL—Official seal required to authenticate acts. RECORD—To be kept of important acts. REMOVAL from office—Records of official acts to be delivered to successor. LIABILITIES—For failure to deliver records to successor and for unfaithfulness in performance of duties. FEES—Depositions, per hour employed, 40c; per page of 200 words, 30c; per mile's travel to place of caption, 10c. Acknowledgments, 50c; for engaging every officer, 25c; recording and certifying, per page of 100 words, 15c; searching record, by the hour, 40c. Noting a marine protest, \$1.00; drawing, recording and extending same, \$1.50; affidavits, 25c; noting a bill, etc., 25c; each notice, 25c; travel, more than one mile, 10c; extending and recording protest, 57c.

§ 66. South Carolina—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. COMMISSION—Fee, \$3.25. TERM of office, during the Governor's pleasure. BOND—Required with approved sureties. OATH of office and the oath regarding duelling to be taken, and certified copies to be filed with the Secretary of State. POWERS AND DUTIES—To administer oaths, take depositions and acknowledgments, affidavits, protests and renunciation of dower. JURISDICTION—Throughout the State. SEAL—Of office to be provided, same to be affixed to his acts of publication and protestations. Its absence shall not invalidate his acts, provided his official title be affixed. Use of by notaries in other States required. RECORD to be kept of important acts. REMOVAL or expiration of office, all records to be given to his successor. LIABILITIES on bond for unfaithfulness. FEES—Taking depositions and swearing witnesses, per copy sheet, 25c; protesting, 50c and postage; duplicate of deposition, protest and certificate, per

100 words, 10c; for attendance on person for proving a thing and certifying, 50c; notarial certificate and seal, 50c; oath or affidavit, 25c; renunciation of dower, \$1.00.

§ 67. **South Dakota**—**ELIGIBILITY**—Citizen resident in State. **WOMEN**—Citizens 21 years of age are eligible to the office. **APPOINTMENT**—By the Governor. **COMMISSION**—Fee, \$2.50. Same to be conspicuously posted in his office. Notice of expiration will be sent thirty days previously by the Secretary. **TERM**—Four years. **BOND**—\$500; file with Circuit Court Clerk. **OATH**—To be taken and filed with Circuit Court Clerk. **DUTIES**—Take oaths and affirmations in their county, protest commercial papers and serve notice, personally or by mail; take depositions; issue subpoenas. **JURISDICTION**—The State. **SEAL**—To be procured with words "South Dakota," an impression to be filed with Secretary of State and the Circuit Court Clerk. Fee for each, 25c. **RECORD**—To be kept of protests and notices with names of parties. **REMOVAL** from office—All records to be filed with the Circuit Court Clerk within three months. **LIABILITIES**—Neglect to file records on removal or expiration of office, or destroying same subjects to fine of from \$50 to \$500 and damages sustained by party. Acting after removal, etc., \$100.00 each offense. **FEES**—Protests, \$1.50; notices, 25c each, and postage; recording, 50c; oath or affirmation, each, 10c; depositions, each 10 words, 1½c; certificate and seal, 25c; acknowledgments, 25c; affidavit and seal, 25c.

§ 68. **Tennessee**—**ELIGIBILITY**—Citizenship, 21 years of age. **APPOINTED** by the justices of the County Court. **COMMISSION** issued by the Governor. **FEE**, \$3.00. **TERM** of office, four years. **BOND**—To be given with good sureties for \$5,000. **OATH**—Of office to be taken and subscribed to before a justice of the peace in his county. **DUTIES**—To take and certify depositions in their county, to administer oaths, take affidavits, protest bills and notes and notify the proper parties. **OFFICE** to be kept in the town of the county in which he was appointed. The County Court may require a notary to keep his office where any bank may be located in the county out of the county town, or where convenient to the people. **SEAL**—Of office to be provided by him, and surrendered to the County Court when removed by any cause. His acts to be under his official seal, received as evidence. **RECORDS**—To be kept of protests and notices of. **REMOVAL** or expiration of office—All records to be delivered to successor. **LIABILITIES**—If ineligible to office, for not delivering books to successor, and neglect of duty. Notaries of other States may take depositions in their State for use in this State, must certify and show date of commencement and expiration of their commission. **FEES**—For recording in his record book, \$1.00; protesting, \$1.50; taking acknowledgments, 50c; each deposition, \$1.00; for other services same fees as allowed other officers.

§ 69. **Texas**—**ELIGIBILITY**—Citizenship. **APPOINTMENT**—By the Governor, with Senate's consent. **COMMISSION**—Secretary of State sends it to the County Court Clerk, party to appear and qualify within ten days and pay \$1.00 fee. Excusable for absence or sickness. Date of notice to be endorsed on it and notification sent the Secretary by the

Clerk. TERM—Two years. BOND—\$1,000, with sureties approved by County Court Clerk. OATH—To be taken and subscribed to and endorsed on back of bond. All recorded by Clerk. DUTIES—Take acknowledgments, certify same under his hand and official seal, administer oaths, make declarations, protests, take depositions, etc., incident to the office. SEAL—To be provided, having in the center a star of five points and "Notary Public, County of ———, Texas," around the margin (filling in his county in the blank space). All official acts to be authenticated therewith. No other seal to be used by him. RECORDS of all his official acts to be kept. Subject to inspection and for certified copies. REMOVAL from office by death, etc., all records to be delivered to County Clerk, under penalty not less than \$100. Can sell his seal. Removal from county vacates office. LIABILITY—For neglect or misfeasance. COUNTY CLERK may certify to his official acts. Secretary of State to furnish County Clerks lists of notaries. FEES—Protesting, registering and seal, \$2.50; each notice, 50c; other protests, per 100 words, 20c; certificate and seal to such, 50c; acknowledgments, 50c; acknowledgments of married women, \$1.00; oath, 25c; certificate under seal, 50c; copies of records, per 200 words, 15c; other acts, 50c; depositions, per 100 words, 15c; swearing witness to deposition, seal, certificate, etc., 50c.

§ 70. Utah—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor. COMMISSION—Fee, \$5.00. With oath and bond to be recorded with the Secretary of State. No suit shall be instituted on bond three years after the cause of action accrues. TERM—Four years. OATH of office to be taken before acting. BOND—For \$500, with sureties approved by the Secretary of State. POWERS AND DUTIES—In their county, to administer oaths, take acknowledgments, affidavits and depositions, make declarations and protests, and other acts usually done by notaries in other States and territories. Date of expiration of their commission to be affixed to all acknowledgments. A violation is a misdemeanor. Protests, when made, written notice to be given the maker and endorsers or security of the instrument as soon as practicable. Service to be personal when the person resides in the same town or city with the notary, otherwise by mail or other safe conveyance. SEAL—To contain the name of his county, State and his name. All his official acts to be attested with it. RECORD—To be kept of official acts, including notices, time, manner of service, names of all parties to whom directed, description and amount of instrument protested. Records shall be competent evidence for legal proof. Certified copies to be given when required and the fee is paid. REMOVAL—When office is vacated all records and papers to be deposited with the Secretary of State within thirty days, he to give certified copies thereof when required and fee received. LIABILITY—Affixing their official seal, wilfully, after expiration of their commission is a misdemeanor. FEES—Protesting, \$1.00; notices, drawing and serving, each, 35c; recording protests, 50c; affidavit or deposition, for first folio, 50c; subsequent folio, 15c; taking acknowledgments, for first signature, 50c; each additional signature, 25c; administering oath or affirmation, 25c; every certificate including writing and seal, 50c.

§ 71. **Vermont**—ELIGIBILITY—Citizenship. APPOINTMENT—By the judges of the County Court, for their county, signed by two or more of them. COMMISSION—Fee not required. TERM of office, during the term of the judge. BOND—Not required. Record to be made with the County Clerk of his oath of office, and certificate of his appointment. Clerks shall forward a certificate of same, with term of office, to the Secretary of State immediately. OATH of office to be taken. DUTIES AND POWERS—Protest and give notice of commercial papers, administer oaths, take acknowledgments, issue subpoenas and attachments for witnesses, take depositions. JURISDICTION—Throughout the State. SEAL of office to be provided by him, and affixed to all his official acts. Seal need not be affixed to acknowledgments or oaths. RECORD—Protests and notices. REMOVAL or expiration of office—All official papers to be delivered to his successor. LIABILITIES for neglect, and collecting illegal fees. County Clerks, by virtue of their office, are notaries public. FEES—Protests and notices, \$1.00; certificates under seal, each, 25c.

§ 72. **Virginia**—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor, not exceeding one for every five hundred population. COMMISSION—Fee for appointment, \$3.00. TERM—Four years. BOND—To be given in the County Court of or corporation for which appointed, within four months from date of commission, under a penalty not less than \$500. The Clerk to immediately forward a copy to the Secretary of State, same to be approved by the court or officer taking it. OATH of office to be taken. DUTIES—Conservator of the peace, administer oaths, collect tax on seals, protest commercial paper, give notice of, take acknowledgments, oaths and affidavits. An annual report to be made of tax to the County Commissioner of revenue between September 1st and October 1st. Taxes on the seal of a notary shall be paid to him. When seal is annexed to any pension claim or for military service, either State or national, or when annexed to an affidavit or deposition no tax charged. No deed or contract to be admitted to record (except for a church or school) or no will admitted to probate, and no grant of administration until tax is paid to the Clerk. JURISDICTION may be for two or more counties or corporations. SEAL—Procure a seal to authenticate his acts. RECORD to be kept of his official acts. REMOVAL from the county or corporation, unless into a county also appointed for, shall be construed as a vacation of office. County Clerk or of corporation shall at once inform the Governor of vacancies or deaths. LIABILITY for failing to return statement of taxes, three hundred dollars, and an additional fifty dollars for each month failing to make statement. Also liable for acting before giving bond and taking oath, \$100 to \$1,000. FEES—Protest, record of, notice to one person besides the maker or acceptor, \$1.00; each additional notice, 10c; acknowledgments, 50c; oath, 25c; certifying affidavits or depositions of witnesses, when done in one hour, 75c; each additional hour, 75c. Fees to be stated at the foot of affidavits or depositions, also to whom charged, and if paid, by whom.

§ 73. **Washington**—ELIGIBILITY—An Elector. APPOINTMENT—

By the Governor, upon petition of twenty freeholders of the county. COMMISSION—Fee, \$10. The Secretary of State shall file with the County Clerk the date of commission. Either may certify the official character of the notary, when required, under their official seal. Fee, \$1.00. PROCURE A SEAL having engraved on it "Notary Public," "State of Washington," and date of expiration of commission, with surname in full, and at least the initials of the Christian name. TERM—Four years. BOND—To the State for \$1,000; sureties approved by the County Clerk. OATH of office required. File with the Secretary of State, bond, oath, treasurer's receipt and impression of seal, the latter subject to the approval of the Governor. DUTIES—In the county, to protest bills and notes, and matters relating to protest, and such other duties pertaining to the office by the custom and laws merchant, take acknowledgments, depositions, affidavits and administer oaths. Every attorney who is a notary may administer any oath to his client. Seal not required on an oath, but in all other cases it is. RECORD to be kept of all notices of protests, with time and manner given, copy of the instrument, and notice. Said record, or a copy, certified under the hand and seal of the notary public or County Clerk having the custody of the original record, shall be competent evidence to prove the facts stated. The same may be contradicted by other competent evidence. REMOVAL, by death, etc., and at the expiration of office, provided his commission is not renewed, records and official papers shall, within three months, be deposited with the County Clerk. Neglect shall forfeit a sum not exceeding one thousand dollars, recoverable in a civil action by the person injured. The executor or administrator is likewise liable. LIABILITY—For unfaithfulness in office. FEES—Protest, \$1.00; attesting with seal, 50c; taking acknowledgment, two persons with seal, 50c; taking acknowledgment, each person over two, 25c; certifying affidavit with or without seal, 50c; registering protest, 50c; being present at demand, tender or deposit, and noting same besides mileage at 10c per mile, 50c; noting a bill or note for non-acceptance or non-payment, 50c; copying any instrument or record, besides certificate or seal, per folio, 15c.

§ 74. West Virginia—ELIGIBILITY—A citizen of the State, must reside in the county of appointment. APPOINTMENT—By the Governor. COMMISSION—Fee, \$2.50, to State Secretary. TERM—During good behavior. BOND—To be given for not less than \$250.00 nor more than \$1,000, with security approved by the County Court. Must qualify within sixty days of notice of appointment, otherwise office is vacant. Acting without qualification forfeits not less than fifty nor more than one thousand dollars. OATH of office required to support the State and United States constitutions and to faithfully discharge the duties of the office, filed with County Court Clerk. DUTIES AND POWERS—To administer oaths, take affidavits, depositions, acknowledgments, examine privily married women respecting any written instruments. He shall be a conservator of the peace, exercising therein the powers of a justice of the peace. Protest bills, demand acceptance or payment thereof, and such other duties as commercial usage require.

**JURISDICTION**—The county of his appointment. **SEAL**—To procure and authenticate official acts with. Not necessary in taking oaths, affidavits, depositions and acknowledgments. **RECORD**—To be kept of official acts. **REMOVAL** from office, all records and official papers shall be deposited with the County Court Clerk within three months after death or removal from office, under a penalty not exceeding five hundred dollars. **LIABILITY**—Disqualifications, conviction of treason, felony or bribery in an election, before any court in or out of this State, fighting or encouraging a duel. Wilful destruction, defacing or concealing of the records or papers forfeits a sum not exceeding one thousand dollars, and damages to the party injured thereby. The protest of bills and notes shall be prima facie evidence of the facts stated if signed by the notary. **FEES**—Protesting, recording, drawing instrument and notice, \$1.00; notices, additional, 10c; acknowledgments, 50c; administering and certifying an oath, other than to a witness, 25c; affidavits or depositions of witnesses, per hour employed, 75c; for other services, the same as allowed Circuit Court Clerks.

§ 75. **Wisconsin**—**ELIGIBILITY**—Resident elector, 21 years of age. **WOMEN** may be appointed. **APPOINTED**—By Governor. **COMMISSION**—Fee, \$2.00, payable to Secretary of State. Commission must be filed, together with notary's autograph and seal impression, with his County Circuit Court Clerk. **TERM**—Four years. **BOND**—Five hundred dollars, and surety approved by the county judge or clerk of the County Circuit Court. **OATH**—To be taken for faithfulness in office. Oath, bond and seal impression to be filed with Secretary of State. **DUTIES AND POWER**—To demand acceptance of bills of exchange, promissory notes, protest same, administer oaths, take depositions, acknowledgments, and other duties accorded by the law of nations or commercial usage. Always state when commission expires. Jurisdiction throughout the State. **SEAL**—To have impression of his name, office and county. **RECORD** to be kept of official acts. **REMOVAL** from office, all records and papers to be filed with the County Circuit Court Clerk. Penalty for failure to so do, within three months, \$50 to \$500. Also liable to injured party for damages arising. Notice of resignation to be sent to the Secretary of State, who will notify the County Circuit Court Clerk. Removal from county vacates his office. **LIABLE**—For misconduct or neglect to party injured. **FEES**—Protest, when necessary, non-acceptance or non-payment, 50c; protest, otherwise, 25c; notice of protest, 25c; affidavit, per folio, 25c; copying affidavit, per folio, 6c; acknowledgments, 25c; taking depositions, per folio, 12c.

§ 76. **Wyoming**—**ELIGIBILITY**—Of good moral character, a citizen of the United States, over the age of twenty-one years, able to read and write the English language, a resident of the State and of the county. **APPOINTMENT**—By the Governor on the petition of five or more reputable freeholders of the county. **COMMISSION**—Fee, \$5.00. **TERM** of office, four years. **BOND**—To be given within sixty days of appointment for \$500, with two sureties approved and filed with the Register of Deeds conditioned for faithfulness in office. **OATH** or affirmation to be subscribed to before any county officer authorized to administer

oaths. **POWERS AND DUTIES**—To administer oaths and affirmations, take depositions, acknowledgments, demand acceptance or payment of bills, promissory notes and obligations in writing, to protest for non-acceptance or non-payment, and such powers and duties required by the law of nations and commercial usage. Jurisdiction, his county. **SEAL** of office to be provided to authenticate his acts, having engraved thereon his name, the words "Notary Public," the name of his county and Wyoming. **RECORD**—Official register to be provided for recording his official acts. The register and seal not subject to levy or sale. Record to be kept of every bill of exchange, promissory note or obligation received for demand and protest, official acts and dates, name of each drawer, indorser or other person notified and the place where notice was delivered. **REMOVAL**—For any cause, deposit of register with the Register of Deeds shall be made within thirty days after expiration of term or removal from office, or death. Neglect to do so subjects him or his executors to a penalty of \$200, recoverable by any citizen of the county, to be applied to the school fund of the county. **LIABILITY**—Persons damaged or injured by his acts may maintain action on his bond, and a recovery shall not bar any future action to the full amount of the bond. It is a felony to sign any false certificate of acknowledgment or jurat, punishable by imprisonment in the penitentiary for three years. Any one requesting or assenting shall be deemed guilty of the same offense. **Evidence**—His certificate, signed and sealed, shall be presumptive evidence in all courts of this State of the facts stated, provided that any person interested as a party to a suit may contradict by other evidence the notary's certificate. Each certificate must contain date of expiration of his commission. **FEES**—Protesting, \$1.00; notices, each, 50c; certificate and seal, 50c; oath or affirmation administered, 50c; acknowledgment of, 50c; additional acknowledgment, 25c; depositions, taking, per folio, 15c; other services, \$5.00.

§ 77. **Canada**—**ELIGIBILITY**—A British subject, not a barrister or solicitor. Subject to examination before a judge of the Supreme or County Court. **APPOINTMENT**—By the Lieutenant-Governor in council. For all or part of Province. **TERM**—During Lieutenant-Governor's pleasure. **COMMISSION**—Fee, \$5.00, payable to the examiner. To act in entire province, \$20; lesser jurisdiction, \$10. To the consolidated revenue fund. **DUTIES**—To attest commercial instruments brought to him for protest and such acts usual to the office. Acknowledgments, affidavits. **SEAL**—Yes.

## CHAPTER II.

### AFFIDAVITS, OATHS AND AFFIRMATIONS.

§ 78. **An affidavit** is a written declaration under oath by a party before some person who has authority under the law to administer oaths, made without notice to the adverse party in a case.<sup>1</sup> It is distinguished from a deposition in this respect, the latter can only be taken by giving notice to the adverse party. It does not depend on the fact whether it is entitled in any cause or in any particular way. Without any caption whatever, it is nevertheless an affidavit.<sup>2</sup>

It is a declaration or statement in writing, sworn to or affirmed before some officer having authority to administer an oath or affirmation. The oath or affirmation is essential, but signing has been held unnecessary, though required as matter of common practice.

§ 79. **Authority.**—An affidavit, to have authority, must be sworn to before an officer.<sup>3</sup> Officer's certificate to an affidavit must show evidence of authority to make his certificate prima facie evidence of the fact.<sup>4</sup>

The civil code of New York requires that, when an affidavit is taken in another State to be used in New York, there must be a certificate that such officer was authorized by the laws of his State to take and certify acknowledgments and proofs of deeds to be recorded in his State. A certificate taken in another State reciting that the officer is a notary public and as such is duly authorized by the laws of such State to take, does not comply with the code of New York.<sup>5</sup> It must be accompanied by the certificate of his authority by the authorized officer of his State. (See statutory requirements.)

<sup>1</sup> Crenshaw v. Miller, 111 F. 450.

<sup>2</sup> Harris v. Lester, 80 Ill. 307.

<sup>3</sup> McDermaid v. Russell, 41 Ill.

489.

<sup>4</sup> Smith v. Lyons, 80 Ill. 600;

Shockley v. Turnell, 40 S. E. 279, Id. 114 Ga. 378.

<sup>5</sup> Stanton v. U. S. Pipe Line Co., 25 Civ. Proc. Reports, 180; Wood

v. St. P. C. R. Co., 7 L. R. A. 149.

An affidavit annexed to a chattel mortgage which was taken in Pennsylvania before a notary public whose jurat failed to state that he was a notary public of that State as required by statute: Held, that it did have annexed an affidavit within the meaning of the law and was not void as to creditors.<sup>7</sup>

The courts of Alabama cannot take judicial knowledge of the appointment and term of office of notaries public in other States and countries. An affidavit of a notary of Tennessee having no notarial seal attached nor any evidence of authority is insufficient.<sup>8</sup> So in most States.

A notary public of another State must certify that he has power to administer oaths; it cannot be presumed.<sup>9</sup> If no authority is shown, it will be treated as a nullity. When a seal is used certificate is not required.<sup>10</sup> Affidavits sworn to before notaries public in Canada, which give no certificate of their authority to administer oaths in the dominion of Canada, are void.<sup>11</sup> The officer who administers an oath must have legal and competent authority, or the person taking it before him, however false, cannot be convicted of perjury.<sup>12</sup>

A notary of another State is permitted to file, as an amendment to his original certificate, an additional certificate stating that he is authorized to administer oaths.<sup>13</sup>

The rights to take affidavits by a notary is a statutory right and is not recognized by the law merchant.

Courts of one State do not always recognize the right of a notary of another State to take affidavits, unless the same is accompanied by the certificate of a clerk of a court of record.<sup>14</sup>

§ 80. **Affidavit sufficiency.**—Looseness in the form of a verification of papers required to be verified, ought not to be encouraged. It is a universal rule in all courts that any

<sup>7</sup> Magowan v. Baird, 53 N. J. Eq. 656.

<sup>8</sup> Ala. Nat. Bk. v. Chattanooga D. & S. Co., 106 Ala. 663; Chandler v. Hanna, 73 Ala. 390; Bradley v. No. Bk., 60 Ala. 252.

<sup>9</sup> Keefer v. Mason, 36 Ill. 406; Smith v. Lyons, 80 Ill. 600.

<sup>10</sup> Harding v. Curtis, 45 Ill. 252.

<sup>11</sup> Ferris v. Commercial Nat. Bk., 158 Ill. 237.

<sup>12</sup> Van Dusen v. People, 78 Ill. 64.

<sup>13</sup> Goldie v. McDonald, 78 Ill. 606.

<sup>14</sup> Teutonia L. & Bldg. Co. v. O'Farrell, — Ind. App. (1898); see Behn et al. v. Yoring, 21 Ga. 207; Minn. St. R. R. Co. v. Keep, 22 Ill. 9; Connalley v. Wallace Co., 51 W. Va. 181.

irregularity in a jurat may, unless expressly waived, be objected to in any stage of a cause.<sup>15</sup>

An affidavit to a claim for a mechanic's lien, stating that the amount claimed was due and payable from a date named in an exhibit, which was stated to be a just and true statement of the account due the petitioner, is a sufficient verification.<sup>16</sup>

A certificate stating that the notice "has been published five times in, etc.," is insufficient. The statute provides that the notice shall be published at least "five successive days."<sup>17</sup>

§ 81. **Affidavit; information and belief.**—A verification of a creditor's bill, wherein the affiant states on his oath and says that "he has read the foregoing bill of complaint, and knows the contents thereof, and the same are true, except as to those matters therein stated upon information and belief; and as to those matters he believes it to be true." This is not a sufficient verification, and amounts to no more than a statement.<sup>18</sup> He must swear peremptorily to the fact.<sup>19</sup>

§ 82. **Affidavit to a publication.**—Where the certificate of publication of the delinquent tax list literally follows the statute no venue need be attached either to the certificate or the oath.<sup>20</sup>

§ 83. **Affidavit; venue.**—If the State and county are given in the venue of the affidavit, this is ample evidence of the place where the oath was administered. Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized and required to act.<sup>21</sup>

§ 84. **A jurat** is that part of an affidavit where the officers states that the same was sworn to before him.<sup>22</sup>

§ 85. **An affirmation**—where an oath is required, if the

<sup>15</sup> *Heffron v. Rice*, 40 Ill. App. 244; *Brabrook T. Co. v. Belding Bros.*, 40 Ill. App. 326.

<sup>16</sup> *Moore v. Parish*, 163 Ill. 93.

<sup>17</sup> *Evans v. People ex rel.*, 139 Ill. 552; *Toberg v. City of Chicago*, 164 Ill. 572.

<sup>18</sup> *Brabrook T. Co. v. Belding Bros.*, 40 Ill. App. 326.

<sup>19</sup> *Heffron v. Rice*, 40 Ill. App. 244; *Leigh v. Green*, 90 N. W. 255.

<sup>20</sup> *Bass v. People*, 159 Ill. 207.

<sup>21</sup> *Van Dusen v. People*, 78 Ill. 645.

<sup>22</sup> *Bouvier's Dict'y.*

party has religious scruples, it shall be deemed complied with by affirmation in judicial form.<sup>23</sup>

§ 86. **Oath** is an outward pledge given by the person that his attestation (or promise) is made under an immediate sense of his responsibility to God.<sup>24</sup> To make a valid oath, for the falsity of which perjury will lie, there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act, by which the affiant consciously takes upon himself the obligations of an oath. The delivery of an affidavit to an officer, signed, is not such an act.<sup>25</sup>

§ 87. **Oaths.**—An oath taken with the uplifted hand, and swearing by the ever-living God, is effectual. If any objection, it should be made before, not after, the verdict.<sup>26</sup> Oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences. Oaths taken by an uplifted hand only, are valid.<sup>27</sup> All persons who believe in the existence of a God and a future state, are on this account good witnesses.<sup>28</sup> One having no religion, believing in no God, and not accountable here or hereafter, cannot become a witness.<sup>29</sup>

§ 88. **Who may administer oaths.**—Notaries public are authorized to administer oaths generally.<sup>30</sup> By the Illinois statute, a notary can administer oaths in all cases, and proof of his official character is not required, except in a county other than where the suit may be pending, as courts take judicial cognizance of all who are authorized to administer oaths within their county.<sup>31</sup>

The power to administer oaths is not one of the incidents of the office of notary public. Under the general Law Merchant, where the power is annexed to the office, it is so by virtue of positive enactment; its existence cannot be presumed in the absence of all proof or ground for presumption.<sup>32</sup>

<sup>23</sup> U. S. Rev. Stat. 1878, sec. 1.

<sup>24</sup> Tyler on Oaths, 15.

<sup>25</sup> O'Reilly v. People, 86 N. Y. 154.

<sup>26</sup> McKinney v. People, 2 Gilr. 540.

<sup>27</sup> Gill v. Caldwell, Breese 53.

<sup>28</sup> Noble v. People, Breese 54.

<sup>29</sup> C. M. T. R. R. Co. v. Rockafellow, 17 Ill. 541.

<sup>30</sup> Edwards v. McKay, 73 Ill. 570; Campbell v. State, 68 S. W. 513.

<sup>31</sup> Stout v. Slatterly, 12 Ill. 162; Rowley v. Berrien, 12 Ill. 200; Dyer v. Flint, 21 Ill. 80.

<sup>32</sup> Keefer v. Mason, 36 Ill. 406.

The officer's certificate must show evidence of authority, to make it *prima facie* evidence of the fact.<sup>33</sup>

The characters "N. P." clearly indicate the office of notary public. In attachment cases the affidavit may be made before any officer authorized by the laws of the State to administer oaths. If in the county, a seal is not required, but it is required for outside the county or State.<sup>34</sup>

An attorney may administer an oath to his client on an affidavit to be filed in the suit.<sup>35</sup>

However improper and unprofessional it may be for attorneys in a case pending, or about to begin, to administer an oath to an affidavit, sworn to by his client in such suit, there is nothing in the law that forbids it.<sup>36</sup> Courts generally discountenance it.<sup>37</sup>

Where the record does not disclose that the acting attorney and the notary signing the affidavit are one and the same, the identity of the two men should not be inferred from the identity of names.<sup>38</sup>

A notary who is superintendent of the special assessment department of a city is not disqualified from administering an oath to any person.<sup>39</sup> It may be to a fellow commissioner, for filing and use in the proceeding.<sup>40</sup>

A court of equity has power to direct that commissioners appointed under the provisions of a decree to appraise real estate and set off homestead may take the oath for the performance of their duties before any officer empowered by law to administer oaths generally, and notaries public are thus empowered.<sup>41</sup>

An attorney having acted for a party in a justice court is not precluded from acting as notary by taking the parties' oath, in subsequent matters.<sup>42</sup>

### § 89. Oaths in U. S. government claims.—A notary public

<sup>33</sup> *Smith v. Lyons*, 80 Ill. 600.

<sup>34</sup> *Rowley v. Berrien*, 12 Ill. 198.

<sup>35</sup> *Evans v. Schriver Laundry Co.*,  
57 Ill. App. 150.

<sup>36</sup> *Id.*

<sup>37</sup> *Link v. Litchfield*, 141 Ill. 469;  
*Hollenbeck v. Detrick*, 162 Ill. 392.

<sup>38</sup> *Bradley v. Claudon*, 45 Ill. App.  
326.

<sup>39</sup> *McChesney v. City of Chicago*,  
159 Ill. 223.

<sup>40</sup> *Peck v. People*, 153 Ill. 454.

<sup>41</sup> *Dillman v. Will Co. N. Bk.*, 138  
Ill. 282; *Id.* 139 Ill. 269, *Id.* 36 Ill.  
App. 272.

<sup>42</sup> *Lynch v. Wayne Circuit Judge*,  
129 Mich. 110, 88 S. W. 387.

<sup>43</sup> U. S. Rev. St. Supp. p. 762.

is authorized to administer oaths in claims against the government for back pay, pensions or bounty cases.<sup>43</sup>

§ 90. **Oaths under U. S. laws.**—In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the Commissioners of the Circuit Courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.<sup>44</sup>

§ 91. **Oaths administered by U. S. government employes.**—No officer, clerk, or employe of any executive department who is also a notary public or other officer authorized to administer oaths, can charge or receive any fee or compensation for administering oaths of office to employes of such department required to be taken on appointment or promotion therein.<sup>45</sup>

§ 92. **Oath of State and other officers, with form.**—Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to-wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."<sup>46</sup> Such oath may be administered by any person who, by the law of the State, is authorized to administer the oath of office; and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner as, by the law of the State, he is directed to record or certify the oath of office.<sup>47</sup>

§ 93. **Oath to adverse claimant of U. S. mineral lands.**—An adverse claimant to mineral lands, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before any notary public of such State or Territory. Applicants for mineral patents may make oath or affidavit required for proof of citizenship before the same.<sup>48</sup>

<sup>44</sup> U. S. Rev. St. 1878, sec. 1778.

<sup>47</sup> Ibid.

<sup>45</sup> U. S. R. S. Sup. vol. 1, p. 791.

<sup>48</sup> U. S. R. S. Sup. p. 338.

<sup>46</sup> U. S. Rev. Stat 1878, secs. 1836 and 1837.

§ 94. **Oaths to applicants for U. S. pensions.**—A notary public is authorized to administer and certify any oath or affirmation relating to any pension or application therefor. In doing so, he must authenticate his act by his seal of office.<sup>49</sup>

§ 95. **Oath of U. S. government officers.**—Every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."<sup>50</sup>

§ 96. **Oath of U. S. government officer, formerly a participant in the rebellion, and authority to administer same.**—Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall,

<sup>49</sup> U. S. Rev. Stat. Supp. 2, p. 50.

<sup>50</sup> U. S. R. S. 1878, sec. 1756.

before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."<sup>51</sup>

The oath of office required by either of the two preceding sections may be taken before any officer who is authorized by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or district where such oath may be administered.<sup>52</sup>

The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six, or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, department, or court to which the office in respect to which the oath is made may appertain.<sup>53</sup>

**§ 97. Oaths to national bank officers.**—The oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven;

Provided, That the officer administering the oath is not an officer of the bank.<sup>54</sup>

**§ 98. Oaths required of all witnesses.**—It is an established rule that all witnesses who are examined upon a trial, civil or criminal, must give their evidence under the sanction of an oath, or some affirmation substituted in lieu thereof. If any person called as a witness refuses or is unwilling to be sworn from alleged conscientious motives, he will be allowed

<sup>51</sup> U. S. R. S. 1878, secs. 1757, 1758, 1759.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> U. S. R. S. Sup. V. 1, p. 318.

to make solemn religious affirmation, involving like appeal to God in the truth of his testimony, in mode which he shall declare to be binding on his conscience. All witnesses are to be sworn according to the peculiar ceremonies of their religion, or in such manner as they may deem binding on their own consciences; and if the witness be not of the Christian religion, the court will inquire as to the form in which an oath is administered in his own country or among those of his own faith, and will impose it in that form.<sup>55</sup>

§ 99. **Oaths of inferior officers.**—The Constitution expressly leaves it in the discretion of the legislature to exempt “inferior officers” from taking the prescribed oath of office. Township treasurers, school trustees, treasurers and directors, are inferior officers.<sup>56</sup>

§ 100. **Oaths, perjured; U. S. statutes quoted.**—Every person who, after taking an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.<sup>57</sup> Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.<sup>58</sup> The officer who administers an oath must have legal authority or the person taking it before him, however false, cannot be convicted of perjury.<sup>59</sup>

<sup>55</sup> Bradners Ev. 2nd ed. p. 134.

<sup>58</sup> Ibid.

<sup>56</sup> School Directors v. People, 79 Ill. 511.

<sup>59</sup> Van Dusen v. People, 78 Ill. 645.

<sup>57</sup> U. S. Rev. Stat. secs. 5392 and 5393.

## STATUTORY REQUIREMENTS.

§ 101. **Alabama**—AFFIDAVITS without the State may be taken by commissioner, judge or clerk of a federal court, judge of any court of record, or notary public, under their hands and official seal. OATHS WITHOUT THE STATE may be taken by notaries and officers authorized to take acknowledgments.

§ 102. **Alaska**—Affidavits may be taken by every court, judge, clerk of a court, commissioner, justice of the peace, and notary. The usual form is used unless the officer has a more solemn or obligatory form or witness may be sworn according to his peculiar religious ceremony. Witness may affirm.

§ 103. **Arizona**—AFFIDAVIT may be taken in this State by—clerk of the District Court or notary, within their counties. Out of the State by any clerk of a court of record having a seal, any notary, or any commissioner of deeds appointed under the laws of this State. Out of the United States by a notary, minister, commissioner, charge d'affaires of the United States, resident in and accredited to the country, consul-general, consul, vice-consul, commercial agent, deputy consul, consular agent of the United States resident in the country.

§ 104. **Arkansas**—AFFIDAVITS taken in this State by—a judge of the court, justice of the peace, notary or clerk of the court. Out of this State by a commissioner appointed by the Governor of this State to take depositions, before a judge of court, mayor, justice of the peace, notary, whose certificate shall be proof of the time and manner of its being made.

§ 105. **California**—AFFIDAVITS may be taken in the State or outside by those authorized to take acknowledgments. OATHS—Form may be varied to suit the witness' religious belief.

§ 106. **Colorado**—AFFIDAVITS, taken in the State, by judges, county clerks, justices and clerks of court, justices of the peace, notaries, within their district. Out of the State, by—a notary, clerk of a court of record, under their official seals, commissioners of deeds.

§ 107. **Connecticut**—AFFIDAVITS AND OATHS—Taken by—Clerk of the Senate, clerks of the House of Representatives, chairman of committees of the General Assembly, or its branches, during session, the Governor, commissioner of school fund, judges and clerks of any court, justices of the peace, commissioners of the Superior Court, county commissioners, notaries, town clerks, commissioners to take acknowledgments appointed by the Governor, commissioners of other States in it, also register of births when noting same. County Superior Court clerk will certify to the notaries' certificate. Party may affirm if objecting to oath, using the words, "Solemnly and sincerely affirm and declare," and instead of "So help you God," the words "Upon the pains and penalties of perjury," shall be used.

§ 108. **Delaware**—AFFIDAVITS AND OATHS—Taken by—The chancellor, any judge, notary public, justice of the peace. Persons

residing outside the State may make oath or affidavits for use in this State before the same officers authorized by this State to take acknowledgments or to probate accounts. Usual form. Swearing upon the holy evangels of Almighty God, by laying the right hand upon the book and kissing it, or with the uplifted hand and swearing by the everliving God, the searcher of all hearts, that, etc., as I shall answer to God at the great day. Anyone opposed to swearing may affirm.

§ 109. **District of Columbia**—AFFIDAVITS AND OATHS may be administered by a chancellor, any judge, justice of the peace, or notary public.

§ 110. **Florida**—OATHS can be administered in this State by—judges and clerks of the Supreme and Circuit Courts, judges of probate, justices of the peace, and notaries public. In other States—any judge or clerk of a Supreme, Circuit or Chancery Court, or a notary public, or commissioner of deeds. In foreign countries—any judge of a court of last resort, a notary public, a minister, consul-general, charge d'affaires, or consul of the United States resident in that country. All to be authenticated by their signature and official seal. An affirmation may be substituted for an oath. False affidavit to defraud insurer—Any master or officer of a ship making or causing to be made a false affidavit or protest, or if any owner or other person concerned in such ship, vessel or goods procures a false affidavit or protest, he shall be imprisoned not exceeding ten years or by fine not exceeding \$5,000.

§ 111. **Georgia**—AFFIDAVIT—May be taken by any notary public, justice of the peace, judge of a court of law, or chancellor, commissioner, or master of any court of equity of the State or county where the oath is made, or officer of such State or county authorized by the laws thereof to administer oaths. The official attestation of the officer shall be prima facie evidence of his official character and that he was so authorized. An affidavit made before any commissioner of this State, or any commissioner, or master, or chancellor of a court of equity, or judge of any court of the State where made, authorized to administer an oath, shall be sufficient verification.

§ 112. **Hawaiian Islands**—AFFIDAVITS AND OATHS may be taken by courts, judges, or their clerks, notaries, commissioners. Affiants may affirm according to their religion.

§ 113. **Idaho**—AFFIDAVITS—In the State may be taken before a judge or clerk of any court, justice of the peace, or notary public. Out of the State, to be used therein, before the judge or clerk of a court of record, or any notary. In a foreign country—An ambassador, minister, consul or consular agent of the United States, or a court of record having a seal. A judge or court outside this State must have their certificate authenticated by the clerk of the court.

§ 114. **Illinois**—WHO MAY ADMINISTER IN THE STATE—All courts, each judge, justice, master in chancery, and clerk thereof, and all justices of the peace, police magistrates and notaries public, Secretary of State, in their districts, counties or jurisdictions. OUT OF

STATE—May be administered by any officer authorized by the laws of the State in which it is so administered, and if such officer have a seal, his certificate under his official seal shall be received as prima facie evidence without further proof of his authority to administer oaths. **FORM OF OATH**—The person swearing shall, with his hand uplifted, swear by the ever-living God, and shall not be compelled to lay the hand on or kiss the gospels. Party may affirm in the following form: You do solemnly, sincerely and truly declare and affirm. Any person who shall so swear or affirm wilfully and falsely, in matter material to any issue or point in question, are subject to the like pains and penalties as are inflicted by law on persons convicted of wilful and corrupt perjury.

§ 115. **Indiana**—WHO MAY ADMINISTER AFFIDAVITS AND OATH—Justices, judges, notaries, mayors, clerks of court, master commissioners, each in their own county or jurisdiction. Affidavits taken in another State to be certified to by the clerk of the Circuit, District or Common Pleas County Court, where the officer taking has jurisdiction, clerk's certificate to state under his hand and court seal that the officer taking is by the laws of said State duly empowered to administer oaths, affirmations and take affidavits. **FALSELY ATTESTING**—A notary public or other officer authorized to administer oaths who certifies that any person was sworn or affirmed before him to any affidavit or other instrument of writing when in fact such person was not so sworn or affirmed, shall be imprisoned in the State prison not more than three years nor less than one year, and fined not more than one thousand dollars nor less than ten dollars. Same with acknowledgments, etc., they shall be imprisoned in the State prison from one to three years and fined from ten to one thousand dollars. Officer to explain the contents of the instrument to the party executing it before certifying to the acknowledgment under penalty of a fine of from five to five hundred dollars and imprisonment of from ten days to six months.

§ 116. **Indian Territory**—AFFIDAVITS—Who can take in the Territory—Every court or its clerk, a judge, master, commissioner, justices of the peace, notaries and arbitrators. **OUT OF THE TERRITORY**—A commissioner of deeds, judge of a court, mayor of a city, notary, justice of the peace, same to be subscribed to by the affiant with separate certificate by the officer. **FORM of taking oaths**—By raising the right hand and kissing the gospels or by solemnly swearing, party may affirm, "You do solemnly and truly declare and affirm," or any peculiar form most solemn and obligatory in the opinion of the officer administering.

§ 117. **Iowa**—AFFIDAVIT may be made within or without this State before any person authorized to administer oaths. Out of the State—A judge or clerk of a court of record, a notary, or a commissioner of deeds appointed by the Governor of this State, are credible. A person desirous of obtaining the affidavit of another who is not willing to make it may apply to an officer competent to take depositions, and if the officer is satisfied that the object is legal and proper he shall

issue a subpoena to bring the witness before him, and if he fails to make a full affidavit within his knowledge as required, the officer may take his deposition by question and answer in writing, which may be used instead of the affidavit. **NOTICE**—The officer may require notice to be given to any party interested and allow him to be present to cross-examine the witness. **OATHS—WHO AUTHORIZED TO TAKE**—Judges of the Supreme Court, judges of the District and Circuit Courts, clerks and deputy clerks of the same courts, county auditors and deputies, sheriffs and deputies where authorized by law to select commissioners and appraisers, or impanel jurors for the view of appraisement of property, or are directed as an official duty to have property appraised or take the answers of garnishees, justices of the peace and notaries within each of their counties, the Governor, Secretary, Auditor and Treasurer of State, when pertaining to their official duties. Affirmation can be made when person is opposed to swearing.

§ 118. **Kansas**—AFFIDAVITS AND OATHS—Administered by justices of the peace in their counties, notaries public, judges of courts in their jurisdictions, mayors of cities and towns, clerks of courts of record, county clerks and registers of deeds. **HOW ADMINISTERED**—By laying the right hand on the Holy Bible, or by the uplifted hand. **FORM**—You do solemnly swear, etc. So help you God. Or, you do solemnly, sincerely and truly declare and affirm, etc., and this you do under the pains and penalties of perjury. **FALSIFYING** subjects the party to the pains and penalties of perjury. **AN AFFIRMATION** can be taken where the party is conscientiously opposed to an oath. **AFFIDAVITS** may be made in and out of the State by any one authorized to take depositions and in the same way.

§ 119. **Kentucky**—AFFIDAVITS AND OATHS administered by notaries must be signed and officially sealed and show date of expiration of their commission. **OATHS** include affirmations. The official oath of any officer may be administered by any judge, notary, clerk of court, or justice of the peace, within his district or county. **Out of the State**—Judge of a court, justice of the peace, notary, and mayor of a city.

§ 120. **Louisiana**—AFFIDAVITS AND OATHS may be taken in the State by judges, justices of the peace, clerks of courts and notaries. **Out of the State**, for use in the State, a Louisiana commissioner or any one authorized by the laws of the State where taken to administer oaths. If other than a Louisiana commissioner authority must be certified by a Louisiana commissioner.

§ 121. **Maine**—AFFIDAVITS, OATHS and affirmations, taken by a notary when authorized by his State or country, a commissioner of deeds for this State, under their signature and official seal. **FORM**—Swear or affirm under the pains and penalties of perjury.

§ 122. **Maryland**—AFFIDAVITS AND OATHS taken in this State—When suit is brought on a bond, deed, note, or other instrument in writing, oath to must be made before a judge or justice of this State, or a commissioner of this State, or a judge or justice of another State

or country, whose authority must appear and be certified by clerks of courts. Out of the State, before a Maryland commissioner, a judge of a court of record, a notary who must authenticate with his seal. **MORTGAGES TO BE VALID**, except as between the parties, must have endorsed thereon an oath or affirmation of the mortgagee that the consideration in said mortgage is true and bona fide as set forth, and an additional oath, that the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage. It may be made any time before recording. The affidavit may be made by one of several mortgagees. It may be made by any agent, signing as agent, or by an officer of a corporation, or the executor of the mortgagee.

§ 123. **Massachusetts**—**AFFIDAVITS** and oaths and affirmations made in the State before a justice of the peace or notary. Out of the State, a Massachusetts commissioner or a notary. Certification not required.

§ 124. **Michigan**—**AFFIDAVITS AND OATHS** may be taken before any justice, judge or clerk of a court of record, Circuit Court, commissioner, notary, justice of the peace, register, or master in chancery, or commissioner appointed by the court. **MODE** of, by holding up the right hand, unless the party can show a more solemn form. No witness incompetent on account of his religious views. Parties may affirm.

§ 125. **Minnesota**—**AFFIDAVITS AND OATHS** taken by judges of the Supreme, District and Probate Courts of this State, judge of the Court of Common Pleas of Ramsey County, the clerks of said courts, county commissioners, registers of deeds, justices of the peace, within their jurisdictions, all legislative committees, commissioners, referees, and committees appointed by any of said courts for matters coming before them, county auditors in their county under their seal of office, but not their deputies, clerks of federal courts, town and city clerks and village recorders. Usual mode with hand uplifted. Notaries can take in their county. Their certificate is *prima facie* evidence without any other authentication either in or outside of the State. The word "affirm" may be substituted, and "under the pains and penalties of perjury" instead of "so help me God."

§ 126. **Mississippi**—**AFFIDAVITS AND OATHS**—By a judge of a court of record, clerk of such court, master in chancery, member of the board of supervisors, justice of the peace, notary public, mayor, or police justice of a city, town or village, and any officer of any State, or of the United States, authorized by law to administer. An affirmation has the same effect.

§ 127. **Missouri**—**AFFIDAVITS AND OATHS**—Taken by every court and judge, justice and clerk, justice of the peace, and notaries. To be administered free of charge in cities of over 100,000 inhabitants, by the mayor, comptroller, auditor, register, collector, recorder of deeds, recorder of voters, president of the board of assessors and their

deputies when in connection with the business of their offices. Parties may affirm. FORM—"You do solemnly declare and affirm, etc., under the pains and penalties of perjury." The officer shall adopt the mode most binding on the conscience of persons to be sworn, according to the peculiar ceremonies of their religion.

§ 128. **Montana**—AFFIDAVITS may be taken in this State before any judge or clerk of any court, or any justice of the peace, county clerk of notary public. In any other State before a commissioner appointed by the Governor of this State to take affidavits and depositions in that State or before a notary public, any judge or clerk of a court of record having a seal. In a foreign country before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal. If taken before a judge of a court in another State or foreign country, the genuineness of the signature, existence of the court and the fact that such judge is a member thereof must be certified by the clerk of the court under its seal. Oaths may be administered by any court, judge, or court clerk, justice, notary and officers authorized to take testimony. Officers are authorized to employ interpreters to issue subpoenas to punish for contempt.

§ 129. **Nebraska**—AFFIDAVITS AND OATHS may be administered by judges of the Supreme and District Courts and their clerks within their districts, by probate judges, justices of the peace and notaries public, within their counties. Party may affirm. May be made in and out of this State before any person authorized to take depositions and must be authenticated in the same way. The officer shall certify that it was sworn to before him and signed in his presence.

§ 130. **Nevada**—AFFIDAVITS in this State may be taken before any judge or clerk of any court, or any justice of the peace, or notary public. In another State, before a commissioner appointed by the Governor of this State, any notary public, or before a judge of any court having a seal. In a foreign country, before a United States ambassador, minister, or consul, or before any judge of a court of record having a seal. When taken before a judge the clerk must certify to the court's existence and the judge as being a member under the court seal.

§ 131. **New Hampshire**—AFFIDAVITS AND OATH—Means also affirmations. Party affirming to state "This I do under the pains and penalties of perjury."

§ 132. **New Jersey**—AFFIDAVITS, OATHS, ETC.—Who may take—Notaries public without the use of their seal of office, commissioners of deeds, the chancellor or any judge of a court of record, master in chancery, justice of the peace, mayor, recorder or alderman of a city or borough, Supreme Court commissioners, city clerk, clerk or surrogate of any county court of record, or township clerks. In other States and countries—Any notary public or officer authorized by the State or country, or authorized by this State to take acknowledgments, and a recital that he is such officer in the jurat under his signature and seal

of office, provided other certificates, when required, be annexed. False swearing subjects to penalty for perjury. May affirm or declare, leaving off "So help me God."

§ 133. **New Mexico**—AFFIDAVITS AND OATHS—Secretary of the territory and all commissioned acting notaries, justices of the peace, within the counties of their commissions are empowered to administer oaths and affirmations where magistrates and other officers within the territory may do so. FORM PRESCRIBED—The person swearing shall, with his right hand uplifted, follow the words required, beginning "I do solemnly swear" and closing "so help me God." If the party is conscientiously opposed to swearing he may affirm, with the right hand uplifted, as follows, "You do solemnly, sincerely and truly declare and affirm," and close with "and this I do under the pains and penalties of perjury."

§ 134. **New York**—AFFIDAVITS AND OATHS—May be taken in The State before a judge, clerk, deputy clerk, special deputy clerk of a court, notary public, surrogate, special surrogate, county clerk, deputy county clerk, special deputy county clerk, commissioner of deeds, within their district, and when certified by the officer, may be used in any court or officer in the State. Outside the State by—an officer authorized by his State to take acknowledgments, his certificate to be accompanied by the certificate of his authority by the officer of his State so authorized. Party may affirm instead of swearing, as follows: "You do solemnly sincerely and truly declare and affirm." Officer may use the mode most binding on the conscience. The witness must be examined first as to his mental capacity to take oath. False swearing in any form is perjury.

§ 135. **North Carolina**—AFFIDAVITS—Who may take—Clerks of the Supreme and Superior Courts, notaries under their seals, justices of the peace, judge or court of the State. Clerks to certify and if for out of the county, court seal is to be attached. Outside the State notaries can take verifications of pleadings but not ordinary affidavits. Affidavits cannot be used outside the State unless certified.

§ 136. **North Dakota**—AFFIDAVITS AND OATHS—Who to administer—Judges of the Supreme, District and County Courts, clerks of the Supreme and District Courts, county auditors and registers of deeds, county commissioners, justices of the peace, notaries within their counties, city clerk and auditors, township clerks and village recorders within their respective limits, sheriffs and their deputies in their counties, and other officers in cases lawfully provided for. Persons may affirm when opposed to swearing, subject to penalty for perjury. Any person who makes or administers an oath illegally is guilty of a misdemeanor. Anyone outside the State, authorized by his State, can take. Cannot be taken by a party in interest.

§ 137. **Ohio**—AFFIDAVIT may be taken in or out of the State before any person authorized to take depositions, and must be signed by the party who makes it. Certified to by the officer and signed by him officially. FORM—The most binding on the person's conscience.

**MILITARY**—The colonel, lieutenant-colonel, major or adjutant of any regiment or battalion raised in this State in the service of the State or United States may administer oaths when necessary to the men in their command.

§ 138. **Oklahoma**—AFFIDAVITS—May be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way.

§ 139. **Oregon**—AFFIDAVITS AND OATHS may be administered by every court, justice of the peace, notary public and commissioners of deeds. If taken outside the State must be verified. **FORM**—Party raises his hand, officer saying, “You do solemnly swear that the evidence you shall give in the issue now pending between —— and —— shall be the truth, the whole truth, and nothing but the truth, so help you God.” Any form more solemnly binding on the witness may be used, according to his religious belief. He may affirm if opposed to an oath.

§ 140. **Pennsylvania**—AFFIDAVITS, OATHS AND AFFIRMATIONS—Notaries can administer. Outside the State—Commissioners or anyone authorized by his State. The latter must be certified by the clerk or prothonotary of the court under his hand and seal. U. S. commissioners. **FORM**—Laying the hand upon the book and kissing it, or by raising the hand and repeating the usual words. False swearing is perjury, and subjects the party to a penalty.

§ 141. **Philippine Islands**—WHO may administer oath for affidavit to be used in the islands—Any judge or clerk of a court, justice of the peace or notary. If taken in the United States to be used in islands—A commissioner appointed by the Chief Executive of the Philippine Islands to take, any notary in the United States, any judge or clerk of a court having a seal. In foreign countries—An ambassador, minister, consul, vice-consul, consular agent, judge of a court of record. Certificates taken in United States or abroad before a judge or a court in the United States or in a foreign country, certified by clerk of court under seal.

§ 142. **Porto Rico**—No statute.

§ 143. **Rhode Island**—AFFIDAVITS AND OATHS may be administered anywhere in the State by the governor, lieutenant-governor, secretary of State, attorney-general, assistant attorney-general, general treasurer, justices of the Supreme Court, Speaker of the House of Representatives, commissioners appointed by other States to take acknowledgments of deeds and depositions within this State, notaries public, the railroad commissioner, the insurance commissioner, and the commissioners of shell fisheries. AFFIDAVITS—Notaries can take.

§ 144. **South Carolina**—AFFIDAVITS AND OATHS—Who may take—In the State, notaries, trial justice, judge or clerk of court. Outside the State, anyone authorized to probate a deed.

§ 145. **South Dakota**—AFFIDAVIT may be taken in or out of this State by any person authorized to administer oaths, viz.: Each justice of the Supreme Court, clerks of the Supreme and District Courts and

their deputies, county clerks and their deputies, county commissioners, judges of Probate Courts, justices of the peace, notaries, commissioners of deeds appointed by the Governor of this State. Each within their jurisdiction.

§ 146. **Tennessee—AFFIDAVITS AND OATH—**Who may take—In the State—any judge, justice of the peace, notary, or court clerk. Outside—a judge, justice of the peace, clerk of the court to certify their certificates under the court seal, a Tennessee commissioner, a notary, under their official seal. In a foreign country—by officers authorized to take acknowledgments, authenticated by the clerk of the court under its seal. The party may make solemn affirmation in the words of the oath. May be sworn according to their religion. Party must lay his hand upon the New Testament and solemnly swear upon the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing by the truth, and kiss the book in confirmation. Party may be sworn with the right hand uplifted, to-wit: I (or you) do solemnly appeal to God as a witness of the truth, and avenger of falsehood, as I shall answer for the same at the great day of judgment, when the secrets of all hearts shall be known that, etc. (as case may be).

§ 147. **Texas—AFFIDAVITS AND OATHS—**Who may take in this State—Any judge or clerk of a court of record, justice of the peace, or notary public. Any other officers authorized by law. Affidavits may be made in other States before—any clerk of a court of record having a seal, any notary or commissioner of deeds appointed under the laws of this State. May be made by an agent or attorney at the commencement or during a suit. Must be in writing, signed by the party making it. If in foreign countries before—any notary, any United States minister, commissioner or charge d'affaires, any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy or consular agent of the United States resident in such country, or any other officers authorized by law. In the mode most binding on the individual taking, subject to the pains and penalties of perjury.

§ 148. **Utah—AFFIDAVITS—**In this State may be taken before—any judge or clerk of any court, or any justice of the peace, or notary public. In another State before—a commissioner appointed by the Governor of this State in that State, or a notary, or any judge or clerk of a court of record having a seal. In a foreign country before—an ambassador, minister, consul, vice-consul, or consular agent of the United States, or any judge of a court of record having a seal. If taken before a judge of another State or foreign country, the genuineness of the signature of the judge, the existence of the court and the fact that such judge is a member thereof, must be certified by the clerk of the court under seal thereof. **OATHS—**Who may take—Every court, judge or clerk or deputy clerk of court, justice, or notary, Secretary of State, and every officer or person authorized to take testimony in any action, or to decide upon evidence in their own counties.

§ 149. **Vermont—AFFIDAVITS AND OATHS—**May be administered by county clerks, justices of the peace, judges and registers of probate,

notaries and masters in chancery, unless otherwise provided by law. A notary need not affix his official seal to his certificate. County clerks may theirs under the seal of the court. Town clerks, where the instrument is to be used in their office. Party may affirm. Where no other provision is made by law, oaths of office may be made by any judge, justice, notary public, master in chancery, or the presiding officer, secretary or clerk of either house of the General Assembly, clerks and registers of courts, committees of the General Assembly, referees, auditors, commissioners, special masters and committees appointed by a court of law or chancery may administer oaths necessary in matters coming before them.

§ 150. Virginia—AFFIDAVITS AND OATHS may be administered by a justice and certified by him unless otherwise provided, or by a notary, a commissioner in chancery, a commissioner appointed by the Governor, a court, or clerk of a court; or, in case of a survey directed by a court, by or before the surveyor. May be made before any officer of another State or country so authorized, and shall be deemed duly authenticated if subscribed by such officer, and there be annexed a certificate of the clerk or other officer of a court of record of such State or country under an official seal verifying the genuineness of the signature of the officer and his authority. A certificate of the person administering shall be given so it may be recorded. Parties may affirm.

§ 151. Washington—AFFIDAVITS, OATHS AND AFFIRMATIONS—Who may take—Every court, judge, clerk of a court, justice of the peace, or notary public. FORM—Party raising the right hand, officer saying, “You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between —— and —— shall be the truth, the whole truth, and nothing but the truth, so help you God.” If other than a witness, “You do solemnly swear you will true answers make to such questions as you may be asked.” Officer may adopt the peculiar mode of witness if more effectual and binding. Party may be sworn according to the peculiar ceremony of his religion. Party may affirm if opposed to oath.

§ 152. West Virginia—AFFIDAVITS AND OATHS may be taken by a justice of the peace in his county, a county commissioner, notary, a commissioner appointed by the Governor, a court or its clerk, a surveyor appointed by the court, any officer of another State so authorized, subscribed to by him and the certificate annexed under the official court seal, verifying the genuineness of the signature and his authority. Any judge of this State may take. An affidavit stating that the witness or party resides out of the State or is out of it, shall be *prima facie* evidence of the fact, same with publisher's affidavit as to publication. Affirmation is equivalent to an oath. Oaths administered shall be certified to by the officer. The certificate of the oath of a notary and all other county, district and municipal officers shall be delivered to and recorded by the clerk of the County Court or the clerk of the court exercising its judicial powers, unless taken in open court.

§ 153. **Wisconsin**—AFFIDAVIT, OATH AND AFFIRMATION—Who may administer besides those to jurors and witnesses on trial, viz.: Any judge, court commissioner, clerk of a court of record, notary, town clerk, justice, city or county clerk, within their jurisdiction, also committee authorized to examine witnesses, police justices. FORM—Any usual one, or according to the peculiar mode of the witness religious views. Party may affirm.

§ 154. **Wyoming**—AFFIDAVITS AND OATHS may be administered by the chief justice and justices of the Supreme Court, the judges of the District Courts, the judge of the Circuit Court of the United States, including the State of Wyoming, the judge of the District Court of the United States for the District of Wyoming, the clerks of the Supreme and District Courts of this State, and the clerks of the Circuit and District Courts of the United States for Wyoming, and their deputies, court commissioners appointed by or under the authority of the laws of the United States or the laws of this State, county clerks and their deputies, clerks of any city, town or village, county commissioners, county superintendents of schools, justices of the peace and notaries within their respective counties. Parties may be sworn in any form they deem binding on their conscience. AFFIDAVITS may be made in or out of this State before any person authorized to take depositions and must be authenticated in the same way. Parties may affirm, subject to the pains and penalties of perjury. FORM—With the right hand uplifted swear, concluding with “So help me God.”

§ 155. **Canada**—AFFIDAVITS AND OATHS—Notaries and commissioners of deeds can take under official seal. An affirmation answers.

## CHAPTER III.

### CONVEYANCES AND ACKNOWLEDGMENTS.

§ 156. **A conveyance** is the transfer of the title of land by one or more persons to another or others. Not only natural persons, but corporations. The instrument which conveys the property is also called a conveyance. The conveyance may be by deed, record or by devise.<sup>1</sup>

Every deed, mortgage or other conveyance in writing, not procured by duress, and signed and sealed by the party making the same, the maker or makers being of full age, sound mind, and discreet, shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements or hereditaments in (the) State, so as, to all intents and purposes, absolutely and fully vest in every donee, grantee, bargainee, mortgagee, lessee or purchaser, all such estate or estates as shall be specified in any such deed, mortgage, lease or other conveyance.<sup>2</sup>

§ 157. **Fraudulent conveyances.**—Conveyances intended to defeat creditors or others are fraudulent and void and may be attacked in a court of equity.<sup>3</sup>

To impeach a conveyance as fraudulent, the intention of both the grantor and grantee must be proven such.<sup>4</sup> A conveyance by husband to his wife when his liabilities begin to jeopardize his future, should always be regarded with watchful suspicion.<sup>5</sup>

<sup>1</sup> Bouvier's Institutes, secs. 2000, 2002; Hutchinson v. Bramhall, 42 N. J. Eq. 384.

<sup>2</sup> Starr & Curtis Anno. Ill. Statutes, p. 910, 1896 ed.

<sup>3</sup> Kent's Com. V. 2, 440; Strauss v. Abrahams, 32 Fed. Rep. 310; Bridges v. Eggleston, 14 Mass. 250.

<sup>4</sup> Ball v. Callahan & Son, 95 Ill. App. 615.

<sup>5</sup> Hank v. Van Ingen, 97 Ill. App. 642; Hughes v. Noyes, 171 Ill. 575; Township of Maple Valley v. Foley, 113 Mich. 622.

§ 158. **Voluntary conveyance** is the transfer of an estate without any adequate consideration of value. The presumption of fraud naturally arises.<sup>6</sup>

§ 159. **A contract** is a promise from a person or persons to another or others actual or implied in law, to do or to refrain from doing some lawful thing, such promise being under seal or reduced to a judicial record, or accompanied by a valid consideration, or executed, and not in a form forbidden or declared inadequate by the law.<sup>7</sup> There must be a sufficient consideration and the parties must agree; they must also be of legal capacity to make a contract.<sup>8</sup>

It is an agreement between two or more persons legally qualified, expressed or implied, to do or not to do a reasonable thing. There must be a consideration and the minds of the parties must meet. It should be in writing, signed and sealed by the parties.

There should always be a written contract in the sale of land and everything should be clearly and distinctly stated. It prevents the arising of questions of verbal instructions which are not admissible in evidence. Parol evidence is inadmissible to vary a contract in writing.<sup>9</sup>

§ 160. **An agent** may be given authority to enter into a contract for the sale or purchase of land either in writing or verbally. His contracts should be signed in the name of his principal, "per," his own name. He should be careful not to exceed his authority.

§ 161. **The Statute of Frauds and Perjuries**, passed in England in 1676, and reenacted by most of the United States, for the prevention of frauds, required in many cases written evidence of a contract. It provides that no action shall be brought to charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof, shall be in writing and signed by the party to be charged there-

<sup>6</sup> Bouvier; Lucas v. Lucas, 103 Ill. 12.

<sup>7</sup> Kinney's Law Dict'y.

<sup>8</sup> Bouvier's Inst. sec. 1633; Anson on Contracts.

<sup>9</sup> Mead v. Dunlevie, 174 N. Y. App. 108.

with, or some other person thereunto by him lawfully authorized.<sup>9a</sup>

§ 162. **A deed** is the carrying out of some pre-existing intention of the parties thereto in the nature of a contract, and must contain every agreement between the parties.

§ 163. **A deed** is an instrument under seal, written or printed, containing some contract or agreement, and which has been delivered by the parties.<sup>10</sup>

The requisites of a deed are that there be sufficient parties, that it be in writing or printing, on paper or parchment; that there be a consideration; that sufficient words be used; that it be read when required; that it be signed and sealed; that it be witnessed; that it be delivered, acknowledged and recorded.<sup>11</sup>

Parties to a deed are: The grantor, who makes the deed; the grantee, to whom it is made. Care should be had as to the names and surnames of the parties.

A consideration is of little consequence as between the parties, one dollar is accounted sufficient; but when creditors are affected it becomes necessary to inquire into it. It may be founded on a good or valuable consideration.

Sealing is very ancient. At common law it was required. In many states of this country it has been abolished. A scroll is all that is now required, except for corporations, which are required to have their name engraved on a metal disc so as to leave an impression on the document.

Witnesses were not required at common law. They are required now only in certain states of this country. An unacknowledged deed requires witnesses, but seldom does an acknowledged deed. They are necessary to prove the issue, or genuineness.

A deed will be construed according to the apparent intent where the language is defective, and, if necessary, the clauses may be rejected or transposed so as to give it its apparent construction.<sup>12</sup> Instruments in writing should be so construed as to render them valid and effectual rather than void. Where one part of the description is false and impossible, but by

<sup>9a</sup> Andrews' Am. Law, pp. 738-741.

<sup>10</sup> Bouvier's Inst. 2002.

<sup>11</sup> Bouvier's Inst. 2099.

<sup>12</sup> Warvelle's Vendors 350, citing Cumberland Assn. v. Aramingo etc. Church, 13 Phila. (Pa.) 171; Stanton v. Mullis, 92 N. C. 623.

rejecting that a perfect description remains, the false and impossible should be rejected.<sup>13</sup>

The delivery of a deed is when its effect takes place and not from its date. A date is not necessary.<sup>14</sup>

A deed must be to some certain person or corporation.<sup>15</sup>

§ 164. **The parts are:** (1) **The premises:** Setting forth parties' names, the reasons for the contract, the consideration, with a description of the land. (2) **The habendum:** To have, showing what estate passes. (3) **The tenendum:** To hold, formerly the tenure, now of little meaning. (4) **The reddendum:** The reservation. (5) ) **The conditions.** (6) **The warranty:** Covenant damages. (7) **The covenants:** The agreement to do or not to do something, either expressed or implied. (8) **The conclusion:** The execution and date.

§ 165. **Form.**—No particular form is necessary, so long as the intent of the parties is clearly set forth and can be readily ascertained in the deed. Uncertain language vitiates it. The tendency is to very short forms. When made by an attorney, they should be in the name of the principal. The attorney must be appointed by letter of attorney. If by a corporation, it must be executed in the corporation's name by officers authorized, and under the corporation seal.<sup>16</sup>

§ 166. **A deed is proved** when witnesses testify to its genuineness. This they do either by having seen the grantor sign it or declare that he signed it. Or they testify to his signature or the handwriting which they know. All deeds must be either acknowledged or proved before they can be placed on record as an evidence of the conveyance. The recording it upon the public records is a notice to all parties of the transfer. If the owner of land sells the same tract to different parties without either knowing it the first one who records his deed has the prior right. The other party has his right of action against the party from whom he bought.

<sup>13</sup> Andersen v. Baughman, 7 Mich. 69.      McConnell v. Brown, Litt. Sel. Cas. (Ky.) 459.

<sup>14</sup> Bouvier's Inst. sec. 2022; Harvey v. Alexander, 1 Rand. (Va.) 241; Hood v. Brown, 2 Ohio 268; Fairbanks v. Metcalf, 8 Mass. 230; Harrington v. Gage, 6 Vt. 532; Robinson v. Wheeler, 25 N. Y. 252;

<sup>15</sup> Jackson v. Corey, 8 Johns. 388.

<sup>16</sup> Bouvier's Inst. sec. 2010; Plummer v. Russell, 2 Bibb 174; Flwell v. Shaw, 16 Mass. 42; Hatch v. Barr, 1 Ohio 390.

§ 167. **A witness** is one who testifies what he knows to be true. It may be the signing of a will, deed or other document, or testifying to certain matters to him known.

When the statutes require two witnesses to a deed, one only will invalidate the deed.<sup>17</sup> The competency of the witness is presumed.<sup>18</sup> Proof of the execution may be made by one subscribing witness.<sup>19</sup>

§ 168. **An acknowledgment** is the act of one who has executed a deed, by going before some competent authorized officer or court, and declaring it to be his or her act or deed. The acknowledgment is certified by the officer or court; and the term is sometimes used to designate the certificate. Its object is to authorize the deed to be given in evidence without further proof of its execution and to enable it to be recorded.<sup>20</sup> Deeds that have been acknowledged are seldom required to have witnesses, but deeds not so acknowledged and certified to are required to have witnesses in order to prove their authenticity or execution.<sup>21</sup>

§ 170. **Acknowledgment essentials.**—These are the facts of acknowledgment and personal knowledge of the parties:<sup>22</sup> Must be on the same sheet as the deed, otherwise it is void, unless the second sheet contains the testatum clause.<sup>23</sup> A certificate of acknowledgment is defective and insufficient when it fails to show that the wife knew the contents of the deed; that the parties were known to the officer; when it fails to show that the parties acknowledged both freely and voluntarily.<sup>24</sup> The grantor must say and the certificate must show that he executed the deed.<sup>25</sup>

§ 171. **Acknowledgments as evidence.**—A notary's seal attached to the acknowledgment of a deed without the notary's

<sup>17</sup> Thompson v. Morgan, 6 Minn. 292; Parret v. Shabhut, 5 Minn. 323.

<sup>18</sup> Job. v. Tibbetts, 4 Gil. 143.

<sup>19</sup> O'Sullivan v. Overton, 56 Conn. 102; Melcher v. Flanders, 40 N. H. 139; Gelatt v. Goodspeed, 8 Cush. 412.

<sup>20</sup> Bowman v. Wettig, 39 Ill. 416; Bouviers Diety; Harrington v. Fish, 10 Mich. 415.

<sup>21</sup> Seaver v. Spink, 65 Ill. 441; Harrington v. Fish, 10 Mich. 415;

Short v. Conlee, 28 Ill. 219.

<sup>22</sup> Joost v. Craig, 131 Cal. 504; State v. Ryland, 63 S. W. 819; Hartshorn v. Dawson, 79 Ill. 108; Hayden v. Westcott, 11 Conn. 129; Smith v. Garden, 28 Wis. 635.

<sup>23</sup> Winkler v. Higgins, 9 O. S. 599.

<sup>24</sup> Lyon v. Kain, 36 Ill. 362; Stuart v. Dutton, 39 Ill. 91; Schley v. P. Car. Co., 120 U. S. 575.

<sup>25</sup> Short v. Conlee, 28 Ill. 219.

signature cannot be received as evidence of the execution of the deed.<sup>26</sup> No objection having been made, when the deed was put in evidence, that the official seal of the notary did not appear on the certificate of acknowledgment, the objection will be regarded as having been waived.<sup>27</sup> The certificate of acknowledgment of a notary or consul is *prima facie* evidence of their official character.<sup>28</sup> In taking acknowledgments, an officer acts under the sanction of his official oath, and his certificate, required by law to be made, should be regarded as high a grade of evidence as if given under oath.<sup>29</sup> A certificate must contain some assignable locality, which the court can judicially notice in order to render the deed admissible as evidence without proof of its execution; and a notarial seal will not cure the defect.<sup>30</sup>

**§ 172. Acknowledgment taken by an attorney.**—A notary who is an attorney is not disqualified from taking an acknowledgment of a mortgage made to his client merely because he holds for collection the claim secured by such mortgage, it not appearing that he has any beneficial interest in the mortgage, nor that the amount of his compensation in any manner depended upon such mortgage.<sup>31</sup>

An attorney or agent of a party who is beneficially interested in a deed or mortgage, or one who is a director or other officer or agent, but not a stockholder, in a corporation which is interested in the instrument to be acknowledged, is not disqualified to take and certify to an acknowledgment in an official capacity.<sup>32</sup>

**§ 173. Acknowledgment taken by a notary when an officer in a corporation.**—An officer in a corporation can attest the execution of its deeds, if an officer, authorized to take acknowledgments.<sup>33</sup> An acknowledgment of a chattel mortgage by a corporation residing in another state can, according to the Illinois statute, be taken before any officer authorized by law to take acknowledgment of deeds.<sup>34</sup> If taken at the

<sup>26</sup> *Clark v. Wilson*, 27 Ill. App. 610, 127 Ill. 449; *Foster v. Latham*,

21 Ill. App. 165.

<sup>27</sup> *Baker v. Baker*, 159 Ill. 394.

<sup>28</sup> *Mott v. Smith*, 16 Cal. 534.

<sup>29</sup> *Warriek v. Hull*, 102 Ill. 280.

<sup>30</sup> *Vance v. Schuyler*, 1 Gil. 160.

<sup>31</sup> *Havemeyer v. Dahn*, 48 Neb. 536.

<sup>32</sup> *Ogden B. Ass. v. Mensch*, 196 Ill. 554; *Cooper v. Hamilton*, 56 Am. St. 795.

<sup>33</sup> *Sawyer v. Cox*, 63 Ill. 130.

<sup>34</sup> *Hewitt v. Watertown Engine Co.*, 65 Ill. App. 153.

home office of the corporation mortgagor, it conforms with the statute.<sup>35</sup> An acknowledgment taken before a notary who is a stockholder, director and attorney of the association is not ipso facto void, but is voidable on proof of fraud, deception or undue advantage by reason of the notary's relationship. In the absence of such proof, the acknowledgment will be upheld. When taken before officers who are related to either party or who are interested in the instruments are contrary to public policy. While not void they are open to attack on the ground of fraud, etc.<sup>36</sup>

The Indiana statutes forbid any officer or employe of a bank or banking corporation, acting as notary public for such bank or banking corporation, because they are interested parties.<sup>37</sup>

A notary is not disqualified from taking an acknowledgment of a mortgage made to a corporation of which he is secretary or treasurer, when it does not appear that he is a stockholder in the corporation or otherwise interested in the conveyance.<sup>38</sup>

**§ 174. Acknowledgment by a notary stockholder.**—A stockholder in a corporation is disqualified from acting as a notary in taking its acknowledgment, because he is financially interested in the transaction. It is against public policy.<sup>39</sup>

**§ 175. Acknowledgment by officer in corporation.**—Act of an officer in taking the acknowledgment of a grantor to conveyance of real estate is a ministerial one. Being secretary and treasurer of a corporation does not authorize the presumption that he is a stockholder. The relationship or interest possessed by an officer disqualifying him from an acknowledgment must be determined from the facts and circumstances of the case. A notary is not disqualified from taking an acknowledgment of a mortgage made to a corporation merely because it is shown he is its secretary and treasurer, it not appearing that he is a stockholder, or otherwise

<sup>35</sup> *Hewitt v. Gen. Elec. Co.*, 164 Ill. 420.

<sup>36</sup> *Cooper v. Hamilton Perpetual B. & L. Assn.*, 97 Tenn. 285, Id. 56 Am. St. 795.

<sup>37</sup> *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293.

<sup>38</sup> *Kothe v. Krag R. Co.*, 20 Ind. App. 293, citing *Smith v. Clark*, 100 Iowa 605; *Bank v. Rivers*, 36 Fla. 575.

<sup>39</sup> *Ogden B. & L. Assn. v. Mensch*, 196 Ill. 554.

beneficially interested in having the mortgage made.<sup>40</sup> The Florida statutes permit the vice-president of a corporation, who is a notary public, to take an acknowledgment to a mortgage for the corporation when he is not one of its stockholders.<sup>41</sup>

**An acknowledgment is void** when taken by an officer who is disqualified to act, or who is a party in interest.<sup>42</sup>

In Florida the acknowledgment of a deed taken by the grantee was held void.<sup>43</sup>

§ 176. **Acknowledgment of sheriff's deed** is essential to its validity for land sold by him under an execution. The property is conveyed against the will of the judgment debtor, the conveyance is not his act, but the act of law; and the law, when acknowledgment is requisite, must be strictly complied with.<sup>44</sup>

§ 177. **Acknowledgment by wife; private examination.**—In Illinois formerly it was essential that in a deed conveying the wife's estate the certificate of acknowledgment should state that she was examined separate and apart from her husband and that the contents of the deed were made known and explained to her. Failing to so state made the deed as to her and her heirs void.<sup>45</sup> This is not so now, she can transfer as if a femme sole. Many states permit her to convey her separate estate without her husband joining. Tennessee so permits, if she has a privy examination before a chancellor or circuit judge of the state or clerk of the county court.<sup>46</sup>

The separate acknowledgment before another notary than the husband's must show that it was her free act, a separate examination, a voluntary act by her, and that she is still satisfied.<sup>47</sup>

The provision of the law authorizing certain officers to

<sup>40</sup> Horbach v. Tyrrell, 48 Neb. 514.

<sup>41</sup> Fla. Sav. Bk. & R. E. Ex. v. Rivers, 36 Fla. 575.

<sup>42</sup> Kothe v. Krag-Reynolds Co., 20 Ind. App. 293, citing Hubble v. Wright, 23 Ind. 323; Bowden v. Parish, 86 Va. 67, and others; Farmers & Merchants Bk. v. Stockdale — Iowa — (Oct. 8, 1903), 18 Chicago Law Jr. 611.

<sup>43</sup> Kothe v. Krag R. Co., 20 Ind. App. 293, citing Hogans v. Carruth, 18 Fla. 587; Green v. Abraham, 43 Ark. 420; Hammers v. Dole, 61 Ill. 307.

<sup>44</sup> Warvelle's Abstracts, p. 301.

<sup>45</sup> Mettler v. Miller, 129 Ill. 630.

<sup>46</sup> Robinson v. Queen, 87 Tenn. 445.

<sup>47</sup> Ludlow v. O'Neill, 29 O. S. 181.

take the private examination of the wife was designed as a substitute for the proceeding at common law by fine and recovery, whereby the rights of the wife, on the one hand, might be guarded, and a sure, unquestionable transfer of her right secured on the other.<sup>48</sup>

A justice's certificate that a married woman declared that voluntarily and of her free will she executed a certain deed is conclusive in the absence of fraud or duress.<sup>49</sup>

Any conveyance good at common law will pass the estate of the husband, whether his wife joins him in it or not, even if not acknowledged before an officer. Whereas in the case of the wife, the statute requires that either the husband must join her in the deed, or, if executed by her alone, that it be acknowledged before some officer. This requirement is mandatory, and if not complied with the deed is invalid.<sup>50</sup> It is sufficient if it appears the statute has been substantially observed and followed. A mere literal compliance is not demanded or expected.<sup>51</sup> Redundancy is to be regarded as surplusage.<sup>52</sup> When a femme covert pleads her right of dower the form is different from that by which she conveys her estate of inheritance.<sup>53</sup> Her execution and acknowledgment must appear certain and clearly express what is intended.<sup>54</sup>

§ 178. **Acknowledgment of chattel mortgages** by a notary of another State is conferred by the force and vigor of the Illinois statutes when the mortgagor resides in such State, as well as in cases of real estate conveyances.<sup>55</sup> The evidence of the officer who takes an acknowledgment of a chattel mortgage is competent for the purpose of impeaching his official certificate.<sup>56</sup> The omission to state the county in an acknowledgment to a chattel mortgage taken before a justice of the peace is immaterial when it is perfectly certain that the acknowledgment was taken by a justice of the peace in and for a town of which the court has judicial knowledge to be in the proper county.<sup>57</sup>

<sup>48</sup> Kerr v. Russell, 69 Ill. 666.

<sup>54</sup> Merritt v. Yates, 71 Ill. 636.

<sup>49</sup> Carr v. H. C. Frick Coke Co.,  
170 Pa. St. 62.

<sup>55</sup> Hewett v. Watertown Steam  
Engine Co., 65 Ill. App. 153.

<sup>50</sup> Snell v. Snell, 123 Ill. 404.

<sup>56</sup> McCurley v. Pitner, 65 Ill. App.

<sup>51</sup> Stuart v. Dutton, 39 Ill. 91.

17.

<sup>52</sup> Chister v. Rumsey, 26 Ill. 97.

<sup>57</sup> Gilbert v. Nat. Cash Reg. Co.,

<sup>53</sup> Lane v. Dolick, 6 McL. 200.

67 Ill. App. 606.

§ 179. **Acknowledgments of town plats.**—While a town plat, imperfectly acknowledged, fails to convey the fee, it is evidence tending to prove a common law dedication, which vests an easement in the streets and alleys in the municipality.<sup>58</sup>

§ 180. **Certificate of acknowledgment** is the officer's statement on a document which a party acknowledges. The officer states that on a certain day named the grantor, who was personally known, or proved to him by the testimony of a witness (giving name) to be the person described in and who executed the deed, personally appeared before him and acknowledged the instrument to be their free act and deed. He signs his name and affixes his official seal by impressing it upon the instrument. The deed is then entitled to record. No officer shall take the acknowledgment of the execution of a deed unless he shall know, or have satisfactory evidence, that the person making the acknowledgment is the individual named in and who executed the conveyance. He is required to put his certificate upon the deed to that effect.<sup>59</sup> A deed may be valid and binding on the parties who execute it, without any acknowledgment. The purpose of the certificate is to prove the execution, otherwise other proof may be resorted to to make it binding on the parties.<sup>60</sup> As between the grantor and grantee a deed neither acknowledged nor recorded will pass the title.<sup>61</sup>

The officer has no right to certify anything that he does not know.<sup>62</sup> Certifying when the party has not appeared before him or when he has not read the instrument is a misfeasance and renders him liable.<sup>63</sup>

A notary's certificate of acknowledgment of a proxy without any venue is defective, since he is a local officer, and it must appear on the face of the certificate that the acknowledgment was taken within his territorial jurisdiction.<sup>64</sup>

A certificate of acknowledgment of a deed or certificate of a notary, or other officer, stating in its body the officer's

<sup>58</sup> Gould v. Howe, 131 Ill. 490.

372, 35 Neb. 517; Harrison v. Mc-

<sup>59</sup> Fryer v. Rockefeller, 63 N. Y.

Whirter, 12 Neb. 155.

268.

<sup>62</sup> Fisher v. Meister, 24 Mich. 447.

<sup>60</sup> Robinson v. Robinson, 116 Ill.

<sup>63</sup> Curtiss v. Colby, 39 Mich. 456.

250.

<sup>64</sup> Re Henschel (U. S. D. C. S. D.

<sup>61</sup> Galligher v. Connell, 46 Neb.

N. Y.) N. B. N. Rep. vol. 3, 933.

official character, it is useless and unnecessary to again certify it by full designation following the signature.<sup>65</sup>

An officer having taken an acknowledgment of a deed, and made a certificate thereof, cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can only be done by the parties reacknowledging the deed.<sup>66</sup> The same is true if the deed had been delivered.<sup>67</sup>

§ 181. **Officers certifying must give their official title**, or it is fatally defective.<sup>68</sup> If the title is given in full in the body of the certificate, its omission from the signature is immaterial. The initials of the title will suffice.<sup>69</sup>

§ 182. **Certificate may be impeached**, as between the immediate parties for fraud, collusion or imposition, but not otherwise.<sup>70</sup>

The acknowledgment of a deed cannot be impeached for anything but fraud.<sup>71</sup>

The policy of the law is to uphold all certificates of acknowledgment; where substance is found, mere clerical errors and technical omissions are disregarded.<sup>72</sup>

In the absence of fraud or collusion, the certificate of the officer taking the acknowledgment is essential to full credit.<sup>73</sup>

§ 183. **Statute conformity**.—The laws of two states cannot be united in taking acknowledgments outside the state; there must be entire conformity to the law of one or the other state.<sup>74</sup> A deed executed out of the state is properly acknowledged if executed according to the laws of the state where the execution takes place.<sup>75</sup> It must appear that the officer

<sup>65</sup> *Hefferman v. Harvey*, 41 W. Va. 766.

<sup>66</sup> *Merritt v. Yates*, 71 Ill. 636.

<sup>67</sup> *Griffith v. Ventress*, 91 Ala. 966.

<sup>68</sup> *Warvelle's Abstracts*, p. 224;

*Hout v. Hout*, 20 O. S. 119; *Cassell v. Cook*, 8 Serg. & R. 268; *Clark v. Wilson*, 27 Ill. App. 610, Id. 127 Ill. 449.

<sup>69</sup> *Summer v. Mitchell*, 29 Fla. 179.

<sup>70</sup> *Fitzgerald v. Fitzgerald*, 100 Ill. 385; *Warrick v. Hull*, 102 Ill. 280; *O'Donnell v. Kelliher*, 62 Ill. App. 641.

<sup>71</sup> *Ogden B. & L. Assn. v. Mensch*, 196 Ill. 554.

<sup>72</sup> *Summer v. Mitchell*, 29 Fla. 179; *Douglass v. Bishop*, 45 Kans. 200.

<sup>73</sup> *Lickman v. Hurding*, 65 Ill. 505; *Calumet v. Russell*, 68 Ill. 426.

<sup>74</sup> *Adams v. Bishop*, 9 Ill. 395; *Montag v. Linn*, 19 Ill. 399.

<sup>75</sup> *Esker v. Hefferman*, 159 Ill. 38; *Summer v. Mitchell*, 29 Fla. 179; *Slaughter v. Bernardo*, 88 Wis. 111; *Keller v. Moore*, 51 Ala. 340; *Post v. F. N. Bank*, 138 Ill. 559.

making the certificate is an officer of the state within which the acknowledgment is made, and that he is acting under and by authority of its laws.<sup>76</sup>

§ 184. **Seals** are of ancient origin, borrowed from the custom of kings. Private seals consist of a mere scroll or the initials L. S., and as they have but little meaning now, are being abolished by many of the states. Official seals and seals of corporations are the only ones much used. They are intended to give validity and solemnity to the act.

§ 185. **Notary's seal must be attached** to all acknowledgments taken by them.<sup>77</sup> The official seal attached to an acknowledgment imparts verity and that the act is official and not individual.<sup>78</sup> No seal is necessary to certificates of acknowledgment unless the statutes expressly require it.<sup>79</sup> The law with regard to the acknowledgment of deeds and mortgages is now unconstitutional and void, as impairing the obligation of contracts. It is within the legislative power to enact, as to future contracts, that the same shall not be binding or effective in any way without a seal or without an acknowledgment of a specific kind or without being recorded. Statutes simply prescribe what shall be essential to constitute a valid contract.<sup>80</sup>

An acknowledgment to a deed taken before a notary public in Missouri under his official seal, in conformity with the Illinois statute for lands situated in Illinois, is sufficient.<sup>81</sup>

§ 186. **Officer must act within the state** of his authority.<sup>82</sup> Some states permit a notary to take acknowledgments to deeds anywhere within the state.<sup>83</sup>

§ 187. **Errors and delivery.**—Deeds must be fully complete before delivery. Alterations made afterwards will either avoid or make them of no effect.<sup>84</sup> Alterations, erasures or interlineations in deeds should be avoided, as they tend to question.

<sup>76</sup> *Final v. Backus*, 18 Mich. 218.

<sup>77</sup> *Dyer v. Flint*, 21 Ill. 80.

<sup>78</sup> *Moore v. Titman*, 33 Ill. 358.

<sup>79</sup> *Thompson v. Morgan*, 6 Minn. 292; *Baze v. Arper*, 6 Minn. 220.

<sup>80</sup> *Parrott v. Kumpf*, 102 Ill. 423.

<sup>81</sup> *Dawson v. Hayden*, 67 Ill. 52.

<sup>82</sup> *Rorers Interstate Law* (2d ed.) 290.

<sup>83</sup> *Guertin v. Mombteau*, 144 Ill. 32; *Openheimer v. Greishofer*, 54 Ill. App. 39.

<sup>84</sup> *Wallace v. Harmstad*, 15 Pa. St. 462.

Deeds may be delivered conditionally to a third person, either to be delivered to the grantee without condition when the rights of the grantee to the deed immediately attach, or it may be delivered as an escrow.

An **escrow** is a conditional delivery of a deed to a stranger until certain conditions shall be performed, to be then delivered to the grantee, the conditions to be distinctly stated at the time of delivery.<sup>85</sup>

§ 188. **Duress.**—A deed made under duress of imprisonment or fear from threats of personal violence is voidable but not void.<sup>86</sup>

Duress of a person is that condition of his mind caused by wrongful conduct of another, rendering him incompetent to contract by the exercise of his own free will.<sup>87</sup>

§ 189. Intoxication may avoid a deed.<sup>88</sup>

§ 190. **Undue influence** over the maker of a deed equity considers a fraud and will set it aside.<sup>89</sup>

§ 191. **Recording.**—A deed is valid as between parties to it without being acknowledged or recorded.<sup>90</sup>

It is sufficient to entitle a deed for record that it be acknowledged before some officer in the state authorized by law to take the acknowledgment.<sup>91</sup>

Recording of deeds, mortgages, liens, judgments, wills and other instruments pertaining to real estate, is necessary in order to give notice to the public regarding the title of the property. Deeds and mortgages may be valid as between the parties and those having notice, but an innocent purchaser might be defrauded.

Knowledge of the existence of an unrecorded deed may be a sufficient ground for the imputation of constructive fraud to a subsequent purchaser.<sup>92</sup>

§ 192. **Registration of title**—**Torrens law** is a system used in Australia, Germany, France, England and several other countries. It is claimed to be a simpler method of transfer-

<sup>85</sup> Bouvier's Inst. sec. 2028; Clark v. Gifford, 10 Wend. 310.

<sup>86</sup> Sanford v. McLean, 3 Paige 117.

<sup>87</sup> Batavian Bank v. North, 114 Wis. 637; Galusha v. Sherman, 105 Wis. 263.

<sup>88</sup> Johnson v. Phifer, 6 Neb. 401.

<sup>89</sup> Howe v. Howe, 99 Mass. 88.

<sup>90</sup> Semple v. Miles, 2 Scam. 315.

<sup>91</sup> Harding v. Curtis, 45 Ill. 252.

<sup>92</sup> Schroeder v. Tomlinson, 70 Conn. 348.

ring lands. It has been adopted to some extent in Illinois, Ohio, Massachusetts, Minnesota, Oregon, California and Colorado.

§ 193. **Parties to a deed.**—All persons having complete ownership, of sound mind, of full age, not in duress, unless otherwise disqualified by law, can acquire or alien title to land. In some states aliens are forbidden to hold by statute.

§ 194. **Power of attorney** is a written instrument, by which one or more persons, called constituents, authorize one or more other persons, called attorneys, to do some lawful act by the latter, for or instead and in the place of the former.<sup>93</sup> Anyone can authorize another to do what he is authorized to do himself.

Deeds when made by an attorney should be in the name of the principal. The attorney must be appointed by letter of attorney. If by a corporation, it must be executed in the corporation's name by officers authorized, and under the corporation seal.<sup>94</sup>

§ 195. **Husband's conveyance to wife.**—By the rules of the common law as distinguished from equity, the husband or wife cannot convey directly, one to the other. But in many states they can. See New York.<sup>95</sup>

§ 196. **Wife's conveyance of her own property.**—Greater strictness is required where a married woman seeks to convey her own real estate, for the reason the deed does not take effect by delivery, as in the case of a conveyance by a husband and wife conveying his estate, in which the wife has but an inchoate, uncertain and expectant interest, which may never be consummated. In the first case, her deed becomes operative only by her acknowledgment in the mode prescribed by statute. Until so acknowledged it has no vitality.<sup>1</sup> It is the acknowledgment that gives effect to the deed, and that must be substantially in conformity with the law; if not so made the deed is invalid.<sup>2</sup>

Wife must be personally known to the officer, in order to

<sup>93</sup> Bouvier's Inst. sec. 893.

<sup>95</sup> Underhill v. Morgan, 33 Conn.

<sup>94</sup> Bouvier's Inst. sec. 2010; 107.

Plummer v. Russell, 2 Bibb 174;

<sup>1</sup> Lindley v. Smith, 58 Ill. 250.

Elwell v. Shaw, 16 Mass. 42; Hatch

<sup>2</sup> Lane v. Dolick, 6 McL. 200.

v. Barr, 1 Ohio 390.

make a deed of the husband's real estate, executed by both, operative as a valid release of the wife's dower; the certificate must show it.<sup>3</sup>

Where the official certificate to a deed shows that the wife, on a private examination, acknowledged the execution thereof, that she freely and voluntarily relinquished her dower, as required by law, and all this without fear or compulsion of her husband, it is of no importance who put her name to the deed so long as it is of record that she acknowledged the signature.<sup>4</sup>

A married woman can only relinquish her rights of homestead and dower in her husband's lands by joining with him in the execution of a deed or mortgage. All other contracts in relation thereto are void for want of capacity.<sup>5</sup> Where there is no homestead in land, the title of the husband can be conveyed alone, it is not necessary that his deed be acknowledged to effect the transfer.<sup>6</sup> In California a homestead cannot be created upon land held in co-tenancy, or tenancy in common, in favor of one of the co-tenants.<sup>7</sup>

§ 197. **Partner's conveyance, by deed.**—One partner has no right to bind his co-partners by deed. If executed in the presence of his co-partners it is deemed an execution by them.<sup>8</sup>

§ 198. **Quit-claim** is a release deed relinquishing all claims to the property for a consideration. It may be for one dollar, love and affection. So long as there is a consideration.

§ 199. **Tax deed** is the instrument by which the officers of the law transfer the title of the rightful owner, for non-payment of taxes, to a purchaser at the tax sale.

§ 200. **Trust deed** is a form of mortgage much used in many states. A deed is made in trust with a power of sale in favor of the mortgagee, with provisions for attorneys' fees in case of foreclosure.

§ 201. **Covenants for title** usually are: That the vendor is lawfully seized (or in possession) of the land; that he has

<sup>3</sup> Hart v. Randolph, 142 Ill. 521.

<sup>7</sup> Id.

<sup>4</sup> Kerr v. Russell, 69 Ill. 666.

<sup>8</sup> Lindley on Partnership, \*p. 137;

<sup>5</sup> Knox v. Brady, 74 Ill. 476.

Brooks v. Sullivan, 32 Wis. 444;

<sup>6</sup> Rosenthal v. Merced Bank, 110 Cal. 198.

Thompson v. Bowman, 6 Wall 316;  
Haynes v. Seachrest, 13 Iowa 455.

the power to convey it; that he promises peaceful possession to the purchaser, his heirs and assigns; that it is free from all incumbrances; and for further assurance.<sup>9</sup> Covenants running with the land are to be governed and controlled by the laws of the State where the land is situated.<sup>10</sup>

§ 202. **A title** is the means whereby the owner of lands hath the just possession of his property.<sup>11</sup>

The validity and construction, as well as the force and effect, of all instruments affecting the title to the land, depend upon the law of the state where the land is situated.<sup>12</sup>

§ 203. **Legal and equitable titles.**—An equitable title requires the simultaneous existence of two estates—the one legal, vested in one person, and recognized only by courts of law; the second equitable, vested in another person, and recognized only by courts of equity. These two interests must be separate, and as a rule, must be held by different persons, for if the legal estate and the equitable estate both become vested in the same person by the same right, then, as a general rule, a merger takes place, and the legal estate alone remains. There are exceptions.<sup>13</sup>

Equitable titles are either good, marketable, doubtful, or bad.

§ 204. **A good title** is one which entitles a man by right to a property or estate, and to the lawful possession of the same. One free from doubt or defects.<sup>14</sup>

§ 205. **A marketable title** is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser. An equitable doctrine but frequently applied in courts of law.<sup>15</sup>

§ 206. **A complete title** is one having the right of possession joined to the right of property.

§ 207. **A doubtful title** is one a court of equity does not

<sup>9</sup> Surgten's Vendors, p. 573.

<sup>10</sup> Dalton v. Taliaferro, 101 Ill. App. 592, citing 4 Kent's Am. 472.

<sup>11</sup> 2 Blackstone 195; Coke on Littleton 345; Arrington v. Liscom, 34 Cal. 365.

<sup>12</sup> Dalton v. Taliaferro, 101 Ill.

App. 592, citing Harrison v. Weatherby, 180 Ill. 418.

<sup>13</sup> Pomeroy's Eq. Jurisp. 2d ed., sec. 147.

<sup>14</sup> Warvelle's Vendors, 2d ed., sec. 301.

<sup>15</sup> Bouvier's Inst., sec. 1954; Maupin's Marketable Titles, 673.

consider clear enough to enforce an acceptance of, nor defective enough to declare bad. A bad title conveys no property.

§ 208. **Title to real estate** is acquired by descent, by purchase and by adverse possession.

§ 209. **Title by descent** is acquired as heir at law, by the death of an ancestor or relative.

§ 210. **Title by purchase** is a generic term and includes every mode of coming to an estate, except by inheritance. Its limited application is to acquisition by bargain and sale.<sup>16</sup>

§ 211. **Title by adverse possession** is the enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and continued under an assertion or color of right on the part of the possessor.<sup>17</sup>

§ 212. **Grants** and concessions, sometimes called **patents**, have been made from time to time by the Federal government and by the states, to public lands.

§ 213. **Eminent domain** is the right which the government holds over all lands to appropriate them to public use when necessary.<sup>18</sup>

§ 214. **An estate** is the degree, quantity, nature and extent of interest which one has in real property.<sup>19</sup>

§ 215. **A fee** is an estate which may continue forever. It is divided into estates of fee simple, fees determinable, fees qualified, fees conditional, fees tail.<sup>20</sup>

A qualified fee is an interest given to a man and certain of his heirs at the time of its limitation. A conditional fee includes one, either to commence or determine on some condition.

§ 215a. **Fee simple** is the absolute estate a man and his heirs have in the land—the largest possible.

§ 216. **Fee determinable** is limited to a man and his heirs.

§ 217. **Fee tail** is the inheritable limited estate which descends to certain classes of heirs of the body of an ancestor.<sup>21</sup>

<sup>16</sup> Warvelle's Abstracts, p. 39.

<sup>19</sup> Bouvier's Inst. sec. 1693.

<sup>17</sup> Pick. 466, 8 Conn. 440, 9 Johns.

<sup>20</sup> Preston on Estates, 419.

174.

<sup>21</sup> Bouvier.

<sup>18</sup> Kent's Com. vol. 2, p. 338 and 339; 3 Paige, ch. 73.

§ 218. **A remainder estate** is "an estate limited to commence after the determination of a particular estate, previously limited by the same deed or instrument out of the subject of property."<sup>22</sup>

Where a contingent remainder is devised the fee descends to the heir, and when the contingency happens the heir's estate opens to let in the remainder.<sup>23</sup>

§ 219. **Merger estate** is the absorption of a lesser estate by the greater when they meet in one and the same person.

§ 220. **Life estate** is held only during the life of the person, such as curtesy and dower.

§ 221. **Curtesy** is the life estate which a husband has in the estate of his wife after her death, providing they have lawful issue capable of inheriting, it is an estate of freehold.

§ 222. **Dower** is the life estate which a wife has in the lands and tenements of her deceased husband, which was acquired any time during their coverture. At common law, and in most of the United States, it is one-third of the estate. The husband's deed to land will pass the legal title without the wife joining. The object of the wife joining is to pass her right of dower.<sup>24</sup> Where a femme covert was the owner of real estate in fee, and executed a deed with her husband, purporting to convey the estate, and the acknowledgment was in substance a mere relinquishment of dower, the deed did not convey the estate of the wife.<sup>25</sup>

§ 223. **A trust estate** is one held for the benefit of another. A trustee is the person holding the estate. A cestui que use is he for whose use the estate is held. A cestui que trust is the equitable owner of the estate. A cestui que vie is one whose life measures the duration of the estate.

§ 224. **Heirs** are those born in lawful matrimony, who succeed to one's estate by descent, or right of blood, and by act of God. There are often heirs by adoption.

§ 225. **Affinity** is the relation existing by marriage. The kindred of the wife with the husband and the kindred of the husband with the wife.

<sup>22</sup> Preston on Estates, p. 90, citing Coke.

<sup>23</sup> Peterson v. Jackson, 196 Ill. 40.

<sup>24</sup> Egan v. Connelly, 107 Ill. 458.

<sup>25</sup> Lane v. Dolick, 6 McL. 200.

§ 226. **Consanguinity** or kindred is the blood degree relationship of individuals, descending from a common ancestor, as **ascendents**. Ancestors: Great grandfather, great grandmother, grandfather, grandmother, father, mother. Descendants: Son, grandson, great grandson. The degree is established by each generation.

§ 227. **Collateral consanguinity** is the relationship between persons having the same ancestry but not the same descendants, like uncle and nephew. Father, son and grandson are lineal descendants. To descend from the same father and mother, same grandfather and grandmother, is to be of the whole blood, but to have the same father and grandfather, but a different mother or grandmother, is to be of the half blood.

In the civil law persons born of the same father and grandfather but of different mothers or grandmothers are consanguineous children. Those born of the same mother or grandmother but of a different father are called uterine children. The common law follows the former, or canon law.

§ 228. **Homesteads**.—This is a constitutionally guaranteed right annexed to land used as a home exempting it from sale under execution for debt adopted by all the States of our Union. The homestead of a widow in a flat building or apartment house is confined to the apartment occupied by her as a residence. Provided it does not exceed in value the exemption allowed by statute.<sup>26</sup>

To convey a homestead right the deed and acknowledgment must contain a clause waiving the rights of homestead.<sup>27</sup>

To create a lien on a homestead estate of mortgagor the certificate of acknowledgment must show that the estate was waived and relinquished.<sup>28</sup>

§ 229. **Joint tenants** are where two or more persons purchase lands and advance the money in equal proportions, and take a conveyance to them and their heirs.<sup>29</sup>

§ 230. **Tenants in common** are such as hold lands and tene-

<sup>26</sup> Potter v. Clapp, 203 Ill. 592, citing Tiernan v. Creditors, 62 Cal. 286; Dyson v. Sheley, 11 Mich. 527; Rhodes Pegram Co. v. McCormack, 4 Io. 368; Mayfield v. Marsden, 59 Id. 517.

<sup>27</sup> Ogden B. & L. Assn. v. Mensch, 196 Ill. 554.

<sup>28</sup> Id.

<sup>29</sup> Sugden's V., p. 698.

ments by several and distinct titles and not by a joint title, but occupy in common. The only unity recognized between them is that of possession.

§ 231. **Easement** is the right which the owner of a piece of property has in the lands of another. It may be a right of way, etc.

§ 232. **Emblements** are the products of the land, its crops, etc., sown by the tenant.

§ 233. **Boundaries, highways, rivers, creeks.**—Boundaries are the lines between estates. They may be monuments or stones, trees, streams or certain objects. The line usually extends to the center of streams and to the center of a street in cities or roads in the country. To the shore of rivers or low tide water of the ocean.<sup>30</sup>

§ 234. **A lease at the common law** is a grant or assurance of a present or future interest, for life, for years, or at will, in lands or other property of a demisable nature, a reversion being left in the party from whom the grant or assurance proceeds. A pecuniary rent, or other recompense, though not essential to the contract, is usually reserved, payable yearly, or at other stated times during the term. The party granting the lease is called the lessor; he to whom it is granted, the lessee. If the instrument be executed by the lessee only, it is not a lease.<sup>31</sup>

It is a contract for the possession and profits of lands and tenements, on the one side, and a recompense of rent, or other income, on the other; it is a conveyance for life, or years, or at will, in consideration of a return of rent or other recompense. The person letting the land is called the landlord; and the party to whom the lease is made, the tenant.<sup>32</sup> If made for a term of years, it should be placed on record.

Facts sufficient to put a purchaser upon inquiry are not sufficient to affect him with actual notice of an unrecorded instrument. The purchaser of property leased for a term of five or seven years, where the lease is not on record, are not sufficient to charge him with notice of a lease.<sup>33</sup>

<sup>30</sup> 75 Io. 365; Gould on Waters, 3d ed. secs. 195, 196, 27; Elliott on Reads, 2d ed. sec. 722.

<sup>31</sup> Platt on Leases, p. 9.

<sup>32</sup> Jackson and others v. Harsen, 7 Cowen (N. Y.) 323.

<sup>33</sup> Toupin v. Peabody, 162 Mass. 473.

§ 235. **Mortgage** is a conveyance by deed of lands by a debtor (called a mortgagor) to his creditor (called a mortgagee) as a pledge and security for the payment of the money borrowed, or the performance of a covenant, with a proviso that the conveyance be void on the payment of the money and interest on a certain day, or the performance of the covenant by which the conveyance of the land becomes absolute at law; yet the mortgagor has an equity of redemption in a reasonable time and to call for a reconveyance. A note or bond usually is given with the mortgage.<sup>34</sup> No particular words are necessary to bind the property.<sup>35</sup>

A mortgage covering land worth excessively more than the debt for which it is conveyed shows fraud.<sup>36</sup>

§ 236. **Mortgage limitation.**—The legal title of a mortgagor remains in him until the execution of a deed, although he fails to redeem. A purchaser at a foreclosure sale who fails to take out a deed within the time allowed by statute has no rights which equity can protect, although they may have had continuous possession since before the entry of the foreclosure decree.<sup>37</sup>

§ 237. **Mortgage warranty.**—One who transfers without recourse a promissory note, together with a mortgage given to secure it, thereby warrants the validity of the security.<sup>38</sup>

§ 238. **Mortgages as trust deeds** are often used. They are made to a third party, as trustee, with power to sell, allowing attorney's fees and costs, and in many states are considered better than the usual form of mortgage.

Where a note and trust deed bear endorsements showing that another person than the trustee is the legal holder of the note, a purchaser from the trustee has notice and is not entitled to protection from the holder of the note.<sup>39</sup> A trustee named in a deed of trust is incompetent to take the acknowledgment of the grantor.<sup>40</sup>

<sup>34</sup> Bouvier's Inst. sec. 884; Hall v. Byrne, 2 Ill. 142; Keith v. Burrows, 1 C. P. Div. 731.

<sup>35</sup> DeLeon v. Higuera, 15 Cal. 483.

<sup>36</sup> Liver v. Thielke, 115 Wis. 389.

<sup>37</sup> Bradley v. Lightcap, 202 Ill. 154.

<sup>38</sup> Waller v. Staples, 107 Io. 738.

<sup>39</sup> Chicago T. & T. Co. v. Brugger, 196 Ill. 96.

<sup>40</sup> Kothe v. Krag-Reynolds Co., 20 Ind. App. 293, citing Stevens v. Hampton, 46 Mo. 404; Taovener v. Barrett, 21 W. Va. 656.

§ 239. **Mortgage satisfaction** is when it has been paid, and an entry to that effect should be made on the margin of the record in the recorder's office as a public notice.

The performance of the conditions of the mortgage by payment before maturity leaves the mortgagee with no estate in or title to the premises. It leaves the mortgagor in his former estate.<sup>41</sup>

§ 240. **Mortgage redemption** is a purchase back, a legal right which the mortgagor has until a breach of conditions, when it becomes an equitable right.<sup>42</sup> Called equity of redemption.

A life tenant of a portion of a mortgaged estate can redeem his or her portion by paying their proportionate amount of the mortgage with proportionate interest, if agreeable to the mortgagee.<sup>43</sup>

Purchaser at a master's sale acquires no title, but merely the right to receive the redemption money, or a master's deed in case the property is not redeemed.<sup>44</sup>

§ 241. **Mortgage foreclosure** is a proceeding in chancery by the creditor, when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage. After the proceeding has begun a statutory period is allowed for redemption before a deed is issued by the Master in Chancery.

A mortgagor has not, as matter of law, a right to redeem after a foreclosure sale and before the conveyances are executed to carry it out. A bill to redeem cannot interrupt the mortgagee's rights to proceed to conclude the mortgagee's rights, unless the amount due is paid into court, or an injunction issues.<sup>45</sup>

§ 242. **Assignment** is the transfer of the interest one has in lands and tenements. It may be an unexpired lease, a mortgage, judgment, etc.

§ 243. **Mortgage discharge** is to set free, or release by payment of the mortgage.

§ 244. **Release** is a discharge of a right of action, which the releasor has against the releasee. The operative words are:

<sup>41</sup> Flye v. Berry, 181 Mass. 442.

<sup>44</sup> Strauss v. Tuckhorn, 200 Ill. 75.

<sup>42</sup> Bouvier.

<sup>45</sup> Brown v. Wentworth, 181 Mass.

<sup>43</sup> Kerse v. Miller, 169 Mass. 44.

49.

remised, released and forever quit claimed.<sup>46</sup> It may be a release of dower, of land by quit claim, or release of mortgage.

§ 245. **Defeasance** is an instrument which defeats the force or operation of some other instrument, or deed, or estate. That which in the same deed is called a condition in another is called a defeasance.<sup>47</sup>

§ 246. **A will** is the legal declaration of a man's intentions of what he wills to be performed after his death. When upon personal property it is simply a will or testament. When upon real property it is a devise. The word devise sometimes signifies the estate given by the will and not the will itself.<sup>48</sup> It must be written on paper or parchment and published as the last will. All erasures and alterations must be explained in it. Must be on one sheet or attached firmly.

A codicil is a clause added to the will after its execution; the purpose of which usually is to alter, enlarge or restrain the provisions of the will, or to explain, confirm and republish it.<sup>47 1/2</sup>

§ 247. **What may be devised.**—Any lands, tenements, and hereditaments, and personal estate owned by the testator.

**Who can devise.**—Any person of sound mind, of full legal age, capable of executing a valid contract.

**Form.**—Must be in writing, signed and dated by the testator, or by some one in his presence and by his express direction. Attested and subscribed to by credible witnesses (according to State statute) and in the presence of the testator and each other. No witness should be made a devisee. Changes or revocation can only be made by codicil or some other will executed in same manner.

A will cannot be corrected or reformed by a court of chancery. They have no power. The intention, which is to be sought for in the construction of a will, is not that which is expressed in the mind of the testator, but that which is expressed by the language of the will.<sup>49</sup>

Compliance with the statute is all that is required. The

<sup>46</sup> Bouvier's Inst. sec. 2066.

<sup>48</sup> Bouvier's Inst. sec. 2101.

<sup>47</sup> Bouvier's Inst. sec. 2074.

<sup>49</sup> Engelthaler v. Engelthaler, 196

<sup>47 1/2</sup> Lamb v. Lamb, 11 Pick 371. Ill. 230.

testator may sign by a mark if he cannot write his name. It is not necessary that subscribing witnesses sign for him.<sup>50</sup>

Beneficiaries and trustees under a will are prohibited from testifying in its favor as against the heirs at law who are contesting it.<sup>51</sup>

§ 248. **Holographic will** is one written entirely by the testator, generally called "olographic."

§ 249. **A nuncupative will** is an oral declaration by the testator, made before competent witnesses, declaring his wishes regarding the disposal of his property.

§ 250. **An olographic will** is derived from the civil law. It must be entirely written, dated and signed by the testator himself. No witnesses are necessary and it may be made anywhere. It is quite common in Louisiana and Spanish-American countries.

§ 251. **Will witnesses.**—In the absence of any evidence of fraud, compulsion, or other improper conduct, a will may be signed by witnesses some distance away from the testator but within his sight. Soundness of mind is presumed unless sufficient evidence is established to prove otherwise.<sup>52</sup>

The requirement of the statutes must be complied with regarding the witnesses to a will signing the same in the presence of the testator.<sup>53</sup>

§ 252. **An executor** or executrix is appointed by the testator in his will to manage the estate.

§ 253. **Legatees** are the persons mentioned in the will to whom bequests or devises are given.

§ 254. **Probate of a will** is the proof made before a court or an officer appointed by law that the instrument offered is the last will and testament of the testator; upon sufficient proof, and security given, the officer issues letters testamentary.

§ 255. **An administrator** or administratrix is appointed by the court to manage the estate.

<sup>50</sup> Scott v. Hawk, 107 Io. 723.

<sup>51</sup> In re Tobin, 196 Ill. 484.

<sup>52</sup> In re Tobin, 196 Ill. 484.

<sup>53</sup> Mendell v. Dunbar, 169 Mass. 74.

§ 256. **Lien** is every case in which real or personal property is charged with the payment of any debt or duty, and the right of detaining it until the claim is satisfied.<sup>54</sup> Taxes, dower, curtesy, leases, mechanics' liens, mortgages and judgments are all liens on real estate.

A lien is not a property in the thing itself, nor does it constitute a mere right of action for the thing. It more properly constitutes a charge upon the thing. It is an equitable right creditors have upon the property of the debtor. A creditor at large cannot enforce the liability without a preliminary judgment and execution.<sup>55</sup>

§ 257. **Mechanic's liens** are statutory liens permitted in every State of the Union for the recovery of money due for labor performed, or material furnished on land, mines, vessels or buildings by contractors or material men and laborers for the owner or tenant of the property. When the work is finished and the payment, or any part of it, is refused, the claim must be filed within a statutory period with an officer of the law, usually the county clerk. A stated time is allowed for the payment, when suit can be instituted. After judgment it remains a lien until satisfied unless barred by statutory limitations. It may attach to an equitable interest in real property, and when foreclosed the decree is a lien thereon.<sup>56</sup>

§ 258. **Tax** is the contribution imposed by the government for the service of the State.<sup>57</sup>

§ 259. **Tax sales** are sales of the property of the owner for non-payment of taxes due the State. They are allowed to run for a certain period, then become forfeited for non-payment and are sold at auction to the highest bidder. After a given period, if still unpaid, or redeemed, a tax deed is issued to the purchaser, which bars the owner's recovery.

§ 260. **Judgment** is the conclusion that naturally and regularly follows from the premises of law and fact, and depends not, therefore, on the arbitrary caprice of the judges, but on the settled and invariable principles of justice.<sup>58</sup>

<sup>54</sup> Bouvier's Inst. sec. 2517.

<sup>56</sup> Sheppard v. Messenger, 107 Io.

<sup>55</sup> Ocean Nat. Bk. v. Ocott, 46 N. 717.

Y. 12.

<sup>57</sup> Bouvier.

<sup>58</sup> In re Sidgeley Avel. 88 Pa. 509.

A judgment in the legal acceptation is the determination of some judicial tribunal created by law for the administration of public justice, according to law, and is in strictness the determination of the law.<sup>59</sup>

Judgments are the final decisions of the courts of law awarding the amount to be paid by the debtor. They are a lien upon the properties of the debtor until they are fully satisfied, or execution is issued. They sometimes are continued for a period of years. They are entered in a book of records and should be the last thing examined in a search for title.<sup>60</sup>

Assignment of judgment transfers only an equitable title.<sup>61</sup>

§ 261. **An execution** is the writ of the court putting into effect the judgment.

Proceedings for taking land upon execution are *stricti juris*, and no title passes unless the statute is exactly pursued.<sup>62</sup>

§ 262. **Judicial sales** are made, under authority of the court, by its officer, sheriff or marshal. The officer conveys all the rights of the defendant in the property sold. The sale carries no warranty, and must be confirmed by the court. Actions for recovery may be instituted within a period of time, or the court, for just reasons, may set the sale aside.

At judicial or sheriffs' sales parties buy merely the interest or judgment, not a title.

§ 263. **Caveat emptor** applies to all purchases of land. Let the purchaser beware. Applies particularly to purchasers at judicial sales.

§ 264. **Action for recovery** is a common law right recognized by every State in the Union (Louisiana excepted), allowing a limited time for the restoration of a former right.<sup>63</sup>

§ 265. **Statute of limitation.**—The time allowed by statute for beginning an action for recovery, instituting a suit, or executing a judgment, etc.

One having title to land under a statute of limitation may

<sup>59</sup> Blood v. Bates, 31 Vt. 147.

<sup>62</sup> Schroeder v. Tomlinson, 70

<sup>60</sup> 3 Green (N. J.) 383; 10 Wendell (N. Y.) 44.

Conn. 348.

<sup>61</sup> Schmidt v. Shaver, 196 Ill. 108.

<sup>63</sup> Bouvier cites 3 Murp. (N. C.) 169; 4 Wheaton 122; 14 N. Y. 16; 5 Mete. 168.

maintain an action against one who has lost title to it by the same statute.<sup>64</sup>

Undisputed possession for more than twenty years under written conveyance gives exclusive ownership adverse to all the world.<sup>65</sup> If a land owner permits the owner of adjoining land, in fencing his land, to enclose a portion of his land, and keep the same, claiming title coextensive with the enclosure for twenty years, the bar of the Statute of Limitation will be applied.<sup>66</sup>

§ 266. **Bill of sale of personal property** made by a husband to his wife, while living together, and acknowledged before a notary, is void.<sup>67</sup>

§ 266½. **Conditional sale** is one in which the transfer of title of the estate is made to depend upon the performance of certain conditions.

§ 267. **Coverture** is the state of a married woman.

**Femme sole** is an unmarried woman.

§ 268. **Equity** is natural justice. It supposes that done which should be done. It follows the law.

The courts of law are limited to the rules of law, relief from which are obtained through equity courts.

§ 269. **Lis pendens** are suits pending. They are liens on lands of the plaintiff until the final decision of the court where the case is pending.

§ 270. **Waiver** is the relinquishment of a right.

§ 271. **An abstract of title** is a brief statement, or history, of every fact of transfer or lien connected with the property, gleaned from the public records and such outside sources accessible. Arranged chronologically, stated concisely and clearly. A plat of the land should first be made. Begin from the government or first grant.

The vendor prepares and pays for the abstract and the

<sup>64</sup> Bradley v. Lightcap, 202 Ill. 154.

<sup>65</sup> Gilman v. Brown, 115 Wis. 1.

<sup>66</sup> O'Flaherty v. Mann, 196 Ill. 304.

<sup>67</sup> Holtzinger v. Gilbert, 62 Ill. App. 96.

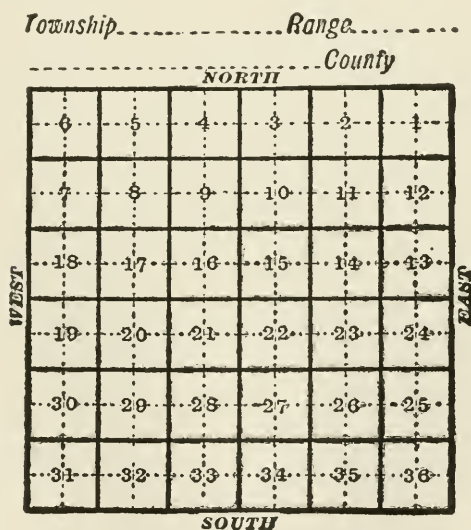
purchaser has his lawyer examine the titles. Most abstracts are now prepared by abstract companies.

No one is bound to accept or give an indemnity for a defective or incumbered title, and it should be refused.<sup>68</sup>

§ 272. **Surveys.**—The United States government surveys are uniform and are done under what is known as the “rectangular system.” Certain east and west lines run with the parallels of latitude and the north and south township lines with the meridians. The system provided for sales in sections of 640 acres, one mile square, quarter sections of 160 acres, or quarter quarter sections of 40 acres. To security certainty and brevity of description, 24 initial points on the intersection of the principal bases with surveying meridians have been used. From the principal bases, townships of six miles square are run out and established with regular series of numbers counting north and south thereof, and from the surveying meridians a like series of ranges are numbered, both east and west of the principal meridians. In order to correct inaccuracies that would otherwise arise from the convergency of meridians as they run to the north pole, and to check errors arising from inaccuracies in measurements on meridian lines, standard parallels or correction lines are run and marked at every four townships or twenty-four miles north of the base, and at every five townships, or thirty miles south of the same. Guide meridians are next surveyed at intervals of eight ranges, or forty-eight miles, east and west of the principal meridian, starting north of the base line in the first instance from the line and closing on the first standard north, then starting from the first standard and closing on the second standard north, and so on. South of the base line, the guide meridians start from the first standard south, and close on the base line; then starting from the second standard, and closing on the first standard, and again starting from the third standard and closing on the second, and so on. The closing corners on the base line and standard parallels are established at the intersection of the meridional lines therewith, thus, owing to the convergency of meridians, occasioning a double set of corners in those lines which are designated as “standard corners” and

<sup>68</sup> Bispham Pr. Eq. sec. 378, 379; Woodford v. Leavenworth, 14 Ind. 314.

“closing corners.” The parallelograms thus formed constitute the framework of the rectangular system (except in California and Oregon, where it is otherwise by some mistake of the original surveyor). These parallelograms are each subdivided into townships six miles square, containing about 23,040 acres. Each township is subdivided into 36 sections of one mile square, each containing, as near as possible, 640 acres. These are subdivided into quarter sections of 160 acres, and these into quarter quarter sections of 40 acres. A tier of townships running north and south is called a range, and each range is numbered as it is east or west of the principal meridian. Each township is also numbered as it is north or south of the base line. The townships are marked by wooden posts four inches square standing two feet deep and two feet above the ground, marked facing the township. The sections are marked with their numbers facing it with its township and range. Each quarter-section or half-mile post has on it  $\frac{1}{4}$  S., to indicate what it stands for. The township corner-posts are notched with six notches on each of its four angles. All mile posts on township lines have as many notches on two opposite angles as they are miles distant from the township corners.



§ 273. **To examine a title.**—Search **County Register's** or **Recorder's** office for—Deeds, mortgages, agreements, powers of attorney, assignments of mortgages, leases, trusts by deed, collector's satisfaction piece (suit upon same limited to three years after record), surveys.

Search **County Clerk's** office for—Taxes forfeited, bonds of tax collector.

Search **County Treasurer's** office for—Taxes not delinquent, inheritance taxes, special assessments, bonds of collectors of taxes.

Search **County** or **Probate Courts** for—Deceased estates, deeds with defeasances, wills, trusts, insolvent assignments.

Search **various courts** for—Judgments, notices of lis pendens, assignments of judgments, foreclosures, receivers, forfeited recognizances, executions, mechanic's liens (county or circuit).

Search **Circuit Court** for—Mechanic's liens.

Search **Sheriff's** office for—Executions, sales.

Search **Criminal Court's** office for—Fines, etc.

Search **U. S. C. C. A., Circuit and District Courts** for—Judgments and decrees, criminal fines and judgments, petitions in bankruptcy.

Search **U. S. Marshall's** office for—Sales.

Search **City and Village Treasurer's** offices for—Special assessments.

Search **City or Village Clerk's** office for—Water taxes.

#### STATUTORY REQUIREMENTS.

§ 274. **Alabama**—ACKNOWLEDGMENTS—IN THE STATE—Before whom taken. Judges of the Supreme and Circuit Courts, Clerks of such courts, chancellors, registers in chancery, probate judges, justices of the peace, notaries. OUTSIDE THE STATE—Federal judges and clerks, judges of courts of record, notaries, commissioners. OUTSIDE THE U. S.—Judges of courts of record, mayors, chief magistrate of any city, town, borough, or county, notaries, any diplomatic, consular or commercial agent of the United States. PERSONALLY KNOWN—Must be personally known or proved to the officer. WITNESSES—Two if not acknowledged; two to a will. PRIVATE SEALS are abolished. WOMAN—Age 18, convey. SEPARATE EXAMINATION of wife required. DOWER—Released by joining with husband or by power of attorney. Waiver of homestead—Separate instrument attested by one witness. POWER OF ATTORNEY—Acknowledged same as deeds.

**LIMITATION**—Of action to recover land, 10 years; of redemption of mortgage, two years; of tax sale redemption, two years; mechanic's lien, six months; judgment liens, two years. Judgment liens limited to ten years. Record of deeds in twelve months. Trust deeds permitted when legal title rests in the trustee.

§ 275. **Alaska**—**ACKNOWLEDGMENTS TAKEN IN THE TERRITORY**—Before any judge, clerk of the district court, notary, or commissioner, within the district. Officer must endorse his certificate and date thereon. **OUTSIDE THE TERRITORY—IN THE U. S.**—Taken before a judge of a court of record, justice of the peace, notary, or other officer authorized by the State or Territory to take acknowledgments, or before a commissioner appointed for such purpose. Unless taken before a commissioner appointed for such purpose or before a notary, certified under his notarial seal, or before a clerk of a court of record, certified under the court's seal, such deed must have attached the certificate of the clerk or proper officer of court of record of the district or county, with seal of office stating that the officer taking was so authorized and that he believes the signature of such person genuine and that the deed is executed according to the laws of such State or Territory. **IN FOREIGN COUNTRIES**—Taken according to the laws of the country before a notary, minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States appointed to reside there, the officer's certificate to be thereon, and, if a notary, his certificate and seal. **MARRIED WOMEN** in the district must join with her husband in a conveyance and acknowledge that she executes it freely and voluntarily. If she resides outside the district her acknowledgment may be the same as if she were sole. **PARTIES** acknowledging must be personally known to the officer. **WITNESSES**—Two to deeds and wills required. **PROOF** of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, by a subscribing witness who knew the parties. Witness must sign name and residence and be personally known or identified to the officer taking. **CURTESY** and **DOWER**, one-third for life. **AGE TO CONVEY**—Majority, or when married. **SEAL** required. Redemption of mortgage, any time before sale or twelve months after. Mechanic's lien foreclosed in six months. Witnesses to a will, two.

§ 276. **Arizona**—**ACKNOWLEDGMENTS TAKEN IN THE STATE BY**—Clerk of Court having a seal, notary, county recorder, justice of the peace. **OUT OF THE STATE BY**—Clerk of a court of record having a seal, commissioner of deeds appointed by the Governor of this State, or a notary public. **OUT OF THE U. S. BY**—A minister, commissioner, or charge d'affaires of the United States resident and accredited where the acknowledgment is made. A consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States resident in the country where the acknowledgment is made, or notary public. **MUST APPEAR BEFORE** and be known to the notary or his identity sufficiently substantiated by credible witnesses. **WITNESSES**—No witnesses are required to a deed; two

to wills. Dower and curtesy do not exist. Community property. PRIVATE SEALS are abolished except those of corporations. AGE TO CONVEY—Married woman 17 years of age. A MARRIED WOMAN'S CONVEYANCE of homestead must join husband and separately acknowledge. Conveyance of her separate property may be acknowledged in the same manner as if she were a femme sole. POWER OF ATTORNEY—To convey lands, must be signed, sealed, acknowledged and recorded. ACTION to recover land when right exists, limited to ten years; under color of title, three years; when cultivated and having deed, five years. MORTGAGE REDEMPTION limited to nine months. MECHANIC'S LIEN to be filed in ninety days. Creditor has nine months after to redeem. REDEMPTION OF JUDGMENTS, nine months. REDEMPTION OF TAX SALE, twelve months. Judgment liens limited to five years. Homestead exemption, \$2,500. Trust deeds permitted as mortgages. Deeds must be recorded to have effect.

§ 277. **Arkansas**—ACKNOWLEDGMENTS IN THE STATE taken by the Supreme, Circuit Court, any of the judges of same, clerk of any court of record, justice of the peace, or notary. Must be under officer's seal. WITHOUT THE STATE—By any United States court, any State court having a seal, the clerk of any such courts, notary, mayor of any city or town, or the chief town officer having a seal of office, a commissioner appointed by the Governor of this State, the clerk of any court of record of the Indian country having attached his seal of office. Officer's seal must be attached. WITHOUT THE UNITED STATES—Before any court of any State, kingdom or empire having a seal, mayor, chief officer of any town or city having an official seal, any officer authorized by such country to take probate of the conveyance of real estate of his country, if he has an official seal. Officer's seal must be attached. PERSONALLY known or identity proved is required. WITNESSES—Two to a will; two to a deed. PRIVATE seals are abolished. WOMAN'S age to convey, 18. Woman's separate examination—Yes, must be voluntary. DOWER, one-third relinquished by joining the husband. CURTESY—Yes, as at common law. HOMESTEAD—Exemption, \$2,500. Wife to join husband in conveyance. POWER OF ATTORNEY to transfer must be acknowledged and recorded. ACTION for recovery of land limited to seven years or three years after legal age. MORTGAGE redemption limited to when due. Tax sale redemption limited to two years. Judgment under execution redemption limited to twelve months. Mechanic's liens to be filed in sixty days. Judgment liens are limited to ten years. DEEDS take effect from time of filing. Trust deeds used.

§ 278. **California**—ACKNOWLEDGMENTS taken at any place in this State, by a justice or clerk of the Supreme Court, or judge of the Superior Court anywhere in State; within the city, county or district for which the officer was elected or appointed by; a clerk of a court of record; a county recorder, court commissioner; a notary public; a justice of the peace. Without the State, but within the United States, it may be taken by a justice, judge or clerk of any court of record of the United States; a justice, judge or clerk of any court of record of

any State; a commissioner appointed by the Governor of this State for that purpose; a notary public or any officer authorized by the State where the acknowledgment is taken. Each are confined to their jurisdiction. To be taken outside of the United States, can be taken by a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is taken; by a consul, vice-consul or consular agent, judge of court of record, residents of the country where taken, or commissioners appointed by the Governor of the State, or a notary public or their deputy if so authorized. PERSONALLY known or identified to officer on the oath or affirmation of a credible witness is required. Officers taking must affix their signatures, name of their office and their seals of office if their State or country authorize them to have a seal. DEFECTIVE CERTIFICATION may be corrected by action of any interested party through the District Court. WITNESSES not required to deed; two to a will. PRIVATE SEALS are abolished. A MARRIED WOMAN'S conveyance has the same effect as if she were unmarried, but has no validity until acknowledged. DOWER and CURTESY do not exist. HOMESTEAD—Exemption, \$5,000. Wife and husband join in conveying. POWER of attorney to convey property must be acknowledged and signed same as a deed. ACTION to recover land limited to five years. COMMUNITY INTEREST in property exists. MORTGAGE redemption limited to five years. TAX SALE redemption limited to twelve months. MECHANIC'S LIENS to be filed in ninety days. Suit to begin in ninety days after. Limit of claim, two years. JUDGMENT redemption, twelve months; limit of lien, five years. TRUST DEEDS used as mortgages. DEEDS take effect when recorded.

§ 279. Colorado—ACKNOWLEDGMENTS—Who may take in the State—County judges in their county, clerks of United States Circuit and District Courts, or his deputy, under the seal of the court; any judge of a court of record; any clerk of such court, or the deputy of the clerk, judge or deputy clerk, county clerk, county recorder, or their deputy, under seal of the court; justice of the peace, provided, if the property lies out of his jurisdiction he shall have attached the certificate of the county clerk and county recorder of the proper county as to his official capacity and authenticating his signature; any notary public under his official seal. Outside the State, before Secretary of any State or territory under State seal; clerk of any court of record under court seal; notary public under his official seal; commissioner of deeds appointed under the laws of this State, under his hand and official seal; any officer of that State so authorized to act, with the certificate of the clerk of some court of record of his county, city or district, that he has such authority. Outside the United States—Any foreign court of record having a seal with the judge's certificate; any mayor or chief officer of any city or town having a seal; United States consul, resident. All under seal. May be in the language of the country and translated by one learned in the language attached to the instrument, sworn and subscribed to by the translator before a proper officer as a true translation. PERSONALLY KNOWN to the officer, or their identity proved by at

least one credible witness known to the officer. Not necessary to state such fact in the certificate, except conveyance or mortgage of homestead. WITNESSES not required to deeds; two to a will. PRIVATE SEALS are abolished. WOMAN—Age to convey, 18. SEPARATE examination not required. DOWER AND CURTESY—Abolished HOMESTEAD exemption, \$2,000. Wife must join and be examined separate and apart, and state that she freely and voluntarily acts in signing and acknowledging. Officer to fully apprise her of her rights and the effect of signing. POWER OF ATTORNEY—Conveyances can be made when executed same as by deed. ACTION to recover land limited to twenty years. JUDGMENT liens limited to six years. Execution limited to twenty years. MECHANIC'S LIENS limited to six months. MORTGAGE redemption, six months. Creditors' redemption, nine months. TAX REDEMPTION, three years. Recovery of land, five years. Insane and minors, one year after removal of disability.

§ 280. Connecticut—ACKNOWLEDGED—If in this State, before a judge of a court of record of this State or of the United States; a clerk of the Superior Court, Court of Common Pleas, or District Court, justice of the peace, commissioner of the school fund, commissioner of the Superior Court, notary public, either with or without his official seal, town clerk or his assistant. In any other State, etc., before a commissioner appointed by the Governor of this State, residing there, or any officer authorized by that State to act. In any other country, before a consul of the United States, notary, or justice of the peace, within their jurisdiction. CONVEYANCE to be in writing and to be free act and deed of grantor. Signed with his own hand or mark. PERSONALLY known—No, but must personally appear. WITNESSES—Two required to deeds; three to wills. PRIVATE SEALS—L. S. or scroll required. WOMAN—Can convey as if unmarried; separate examination not required. DOWER—One-third for life. POWER OF ATTORNEY—Husband and wife can convey by, without joinder. DEEDS take effect when recorded. Corporation deeds require two witnesses. MORTGAGE redemption awarded by court. MECHANIC'S LIEN suit limited to two years' time. TAX redemption limited to one year. JUDGMENT redemption when due, runs four months. LEASES for more than one year must be written, executed, attested, acknowledged and recorded. Statutes of uses remain.

§ 281. Delaware—ACKNOWLEDGMENTS—In State, before the Superior Court, chancellor or any judge or notary public, or before two justices of the peace for the same county. Out of this State, may be made before any consul general, consul, vice-consul, consular agent or commercial agent of the United States duly appointed in any foreign country; before any judge of any District or Circuit Court of the United States, or the chancellor or judge of a court of record of any State, territory or country, or the mayor or chief officer of any city or borough, certified to under their hand and official seal, or certified to by any such court or clerk thereof under the seal of the court; any commissioner of deeds appointed by the Governor of this State under

his hand and official seal; any notary public. PERSONALLY known, or identification of acknowledging party required. WITNESSES—One to a deed, two to wills. PRIVATE SEALS—Scroll will answer. WOMEN—21 years can convey by joining husband. WOMEN, SEPARATE EXAMINATION OF, is required. DOWER AND CURTESY—One-half for life if no children; one-third if there are children. POWER OF ATTORNEY to convey to be acknowledged or proved and recorded same as a deed. Married women may so convey. ACTION for recovery of lands limited to twenty years, or ten years after the removal of a disability. DEEDS to be recorded in three months. JUDGMENT LIENS limited to ten years. MECHANIC'S LIENS to be filed in ninety days. TAX REDEMPTION limited to two years.

§ 282. **District of Columbia**—ACKNOWLEDGMENTS may be made before any judge of the District, United States Supreme Court, clerk of the District, Recorder of Deeds, justice of the peace, notary public. Outside the district, within the United States, before a judge of a court of record and of law, State Chancellor, judge of Supreme, Circuit, U. S. Territories, justice of the peace, notary public. The certificate of any officer not having a seal must be accompanied by a certificate of the register, clerk, or other public officer having cognizance of the fact, under his official seal, that, at the date of the acknowledgment the officer taking the same was in fact the officer he purported to be. In a foreign country, before any judge, notary public, secretary of legation or consular officer of the United States. If made before any officer other than a secretary of legation or consular officer, the official character of the person taking must be certified to as above. FORM—I, A. B. (give official title), in and for (county, city or parish, district, etc.) aforesaid, in the State of ———, do hereby certify that C. D., a party to a certain deed, bearing date on the ——— day of ———, and hereto annexed, personally appeared before me in the county (or city) aforesaid, the said C. D. being personally well known to me as (or proved by the oaths of credible witnesses before me to be) the person who executed the said deed, and acknowledged the same to be his act and deed. Given under my hand and seal this ——— day of ———.

A. B. (Seal.)

PERSONALLY KNOWN, or identified to the officer, is required. WITNESSES—Two to deeds, two to wills. PRIVATE SEALS—None required. WOMEN—Married, may convey their separate property as if femme sole. SEPARATE EXAMINATION OF, before signing, is required. DOWER—Right exists and conveyed by joining husband. May release it by separate deed. CURTESY—Exists. POWER OF ATTORNEY to convey not allowed. ACTIONS for recovery of land limited to fifteen years. ESTATES limited to lives in being and twenty-one years thereafter. MECHANIC'S LIEN limited to one year, suit to be filed six months after work done. JUDGMENT LIEN limited to twelve years.

§ 283. **Florida**—ACKNOWLEDGMENTS—If in this state, before any judge, clerk or deputy clerk of any court of record, notary public or justice of the peace of this State, under their court or official seal. In

another State, before a commissioner of deeds for this State, a judge or clerk of any United States or State court having a seal, or before a notary or justice of the peace of such State, having a seal. In foreign countries, before any commissioner of deeds appointed by the Governor of this State resident there, before any notary having a seal, any minister, charge d'affaires, consul general, consul, vice-consul, commercial agent or vice-commercial agent of the United States appointed to reside there. Such proofs to be under the official seal of the officer. PERSONALLY KNOWN, or satisfactorily identified to officer, is required. WITNESSES—Two required to deed, two to wills. PRIVATE SEALS—Scroll is required. WOMEN—Age 21 years; married woman minor can convey; her separate examination required, and that she executed it freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her husband. This is required in the officer's certificate. DOWER—May be released by joining husband in the conveyance. CURTESY—None. Spanish law preserved. HOMESTEAD—One hundred and sixty acres of land or five acres in an incorporated city or town and \$1,000 personalty. Husband and wife to join in conveyance. POWER OF ATTORNEY to convey to be acknowledged, signed and recorded. Husband must join wife in it. ACTIONS to recover land limited to seven years. JUDGMENT liens limited to twenty years. MORTGAGE redemption, twenty years. TAX redemption, two years. MECHANIC'S LIEN—Limitation, one year.

§ 284. Georgia—DEEDS must be in writing. ACKNOWLEDGMENTS—To authenticate the record of a deed, if executed in this State, it must be attested by a judge of a court of record of the State, or a justice of the peace, or a notary public, or clerk of the Superior Court, in the county where the last three hold their appointments, or if subsequent to its execution the deed is acknowledged in the presence of either of the named officers, that fact, certified on the deed by such officer shall entitle it to record. EXECUTED OUTSIDE THIS STATE it must be attested by or acknowledged before a commissioner of deeds for this State, a consul or vice-consul of the United States, their certificate under their seal being sufficient evidence of the fact; or by a judge of a court of record in the State where executed, with a certificate of the clerk under the court's seal of the genuineness of the judge's signature; or by a clerk of a court of record under the seal of the court; or by a notary public of the State and county where executed with a certificate under the court seal from the clerk of the court under which the notary holds his appointment, or if appointed by the Governor, then with a certificate from the Secretary of State, certifying that said notary was at the time of the execution of the deed regularly commissioned and authorized by law to attest deeds and take acknowledgments thereof. PERSONALLY known to officer, must be, or identified to. WITNESSES—Two required to deeds and three to wills. PRIVATE SEALS—Scroll required. WOMEN'S age to convey, —; must join her husband in conveying her interest; separate examination required stating she joins with her husband of her own free will and consent, without any compulsion or force used by him to oblige her to do so.

DOWER—One-third for life. Transferred by joining husband in the deed. CURTESY—None. HOMESTEAD—Application to sell must be made to the judge of the County Superior Court. POWER OF ATTORNEY—Wife may convey by. ACTION for recovery of land limited to twenty years. DEEDS first on record take effect. ESTATES tail limited to lives in being. MORTGAGE redemption limited to four months. MECHANIC'S LIEN—Notice must be given in thirty days; holds until paid. TAX redemption limited to one year. JUDGMENT lien claims limited to seven years in the State, five years out of State.

§ 285. **Hawaiian Islands**—ACKNOWLEDGMENTS taken by Register of Conveyances or his agent, judge of a court of record, a notary of the Republic. OUT OF THE COUNTRY—A minister, commissioner, consul, notary, judge of a court of record. The execution of a deed may be proved by subscribing witness thereto before any judge of a court of record of the Republic, should anything occur to prevent its acknowledgment. PERSONALLY KNOWN to the officer taking is required of every grantor or proof of their identity by a credible witness. Officer's certificate must so state. DOWER—One-third fee simple exists, is released by jointure or by separate deed. CURTESY—None. MARRIED woman to be examined apart from her husband that she signed without compulsion, fear or restraint from her husband. Women married may convey their property as if sole. Unmarried convey at 18. WITNESSES to prove a deed, none when acknowledged. TO A WILL, two required. ACTION for recovery of land limited to five years after removal of disability. Deeds take effect when recorded. MORTGAGE redemption when due. MECHANIC'S LIEN—Notice to be filed with Circuit Court clerk in thirty days. JUDGMENT execution issues in ten days. TAX redemption limited to one year.

§ 286. **Idaho**—ACKNOWLEDGMENTS may be made anywhere within the State before a justice or clerk of the Supreme Court. Within the city, county or district, before a judge or clerk of a court of record, a county recorder, notary or justice of the peace. Without the State, but in the United States and within the jurisdiction of, a justice, judge or clerk of a court of record of the United States; a justice, judge or clerk of any State court of record; a commissioner, appointed by the Governor of this State; a notary or any officer authorized by his State laws. Outside the United States, before a minister, commissioner or charge d'affaires, a consul, vice-consul of the United States, resident and accredited; a judge of a county court of record; commissioners appointed by this State's Governor; a notary, or by the deputy of the four latter, all residents of the country. PERSONALLY known to the officer, is required, or positively identified. WITNESSES—One witness to deed if not acknowledged, two to wills. PRIVATE SEALS—Not required. WOMEN—Age to convey, 18. Married women convey their property with joinder of husband. Separate examination required and to be made acquainted with contents, and state she executes the instrument and does not wish to retract it. DOWER AND CURTESY—None. Community of interest. Conveyance jointly. POWER OF ATTORNEY—Conveyance jointly. ACTION to recover land limited to five years.

DEEDS take effect when recorded. ESTATES limited to persons in being. HOMESTEAD—Exemption, \$5,000; to head of family, \$1,000; to others, conveyed jointly. MORTGAGE redemption when due. MECHANIC'S LIENS—Contractor files in ninety days; others in sixty days; holds six months after. TAX redemption, three years. JUDGMENT lien expires in two years.

§ 287. Illinois—ACKNOWLEDGMENTS may be taken IN THE STATE before a master in chancery, notary, U. S. commissioner, circuit or county clerk, justice of the peace, or any court of record having a seal, or any judge, justice or clerk of such court. A notary or United States commissioner, must attest with their official seal. A justice of the peace residing out of the county of the land must have attached to the instrument the certificate of the clerk of his county court, under his seal of office, that he is a justice of the peace at the time. FRAUDULENT ACKNOWLEDGMENT—Any officer falsely certifying with intent to defraud or injure or enable any other person to so act shall be imprisoned in the penitentiary not less than one nor more than five years, or confined in the county jail not exceeding one year and fined not exceeding \$1,000. TAKEN IN OTHER STATES BEFORE a justice of the peace, notary public, master in chancery, U. S. commissioner, commissioner of deeds, mayor, county clerk, judge, justice, clerk or deputy clerk, of the U. S. Supreme, Circuit or district courts, same of any State, Supreme, Circuit, Superior, District, County or Common Pleas, Probate, Orphan or Surrogate Court, or prothonotary or register. In a dependency of the United States before a commissioned officer in U. S. military service. Each need their own or court official seal. Justices of the peace and masters in chancery shall have added the certificate of the proper clerk under his official seal, stating they are authorized to take and are in office. May be made in conformity to the laws of the State where made, if so certified to, by the County Court clerk. MAY be taken in FOREIGN LANDS before any court having a seal, judge, justice or clerk thereof, minister or consul of the United States, notary or any officer authorized by the country, attested under their official seal. If they have no seal a certificate must be added by some ambassador, minister, secretary of legation, vice-consul, deputy, consul, commercial agent of the United States, resident there, under his official seal showing that such officer or court is acting at the time. Proper proof being shown, the form of the country shall be prima facie evidence and shall be valid in law. Fraudulent acknowledgments punishable by fine and imprisonment from one to five years and \$1,000. Being a stockholder or officer of a corporation does not prohibit the officer from taking. Record of deeds, mortgages, etc., required, notice is from time of filing. Unacknowledged deeds may be recorded but not admitted as evidence unless proved. PERSONALLY KNOWN or positively identified to officer is required. WITNESSES—None to a deed, two to a will. PRIVATE seals—Scroll required. WOMEN—Age to convey, 18. Separate examination not required. DOWER, one-third interest for life, conveyed by joining husband. Curtesy abolished. Homestead exemption, \$1,000. Conveyed by jointure clause must be inserted in the deed, "including the

release and waiver of the right of homestead." POWER OF ATTORNEY—Married woman can convey her estate as if single. ACTION to recover land limited to 20 years. ESTATE fee simple conveyed, estate tail abolished. MORTGAGE redemption limited to one year. MECHANIC'S Lien contractors claim to be filed in four months after work, if additional work, then four months thereafter. Suit shall be brought to enforce lien, or a verified claim for lien shall be filed with the clerk of the circuit court within two years after completion of the work. TAX redemption limited to two years. JUDGMENT redemption limited to twelve months. JUDGMENT Lien limited to seven years. TRUST DEEDS used as mortgages. CHATTEL MORTGAGES—No mortgage, trust deed or other conveyance of personal property having the effect of a mortgage or lien upon such property, shall be valid as against the rights and interests of any third person, unless possession thereof shall be delivered to and remain with the grantee, or the instrument shall provide for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded as hereinafter directed; and every such instrument shall, for the purposes of this act, be deemed a chattel mortgage.—Starr & Curtis' Anno. Statutes, 1896, p. 2743. Such instrument shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no acting justice of the peace in the town or precinct where the mortgagor resides, then such instrument may be acknowledged before the county judge of the county in which the mortgagor resides; or, if the mortgagor is not a resident of this State at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgment of deeds. The certificate of acknowledgment may be in the following form: This (name of instrument) was acknowledged before me by (name of grantor) (when the acknowledgment is made by a resident, insert the words "and entered by me"), this—day of—, 18—. (Name of officer.)

Witness my hand and seal—

—Starr & Curtis' Anno. Statutes, 1896, p. 2751.

§ 288. **Indian Territory**—ACKNOWLEDGMENTS—Before whom taken: IN THE TERRITORY—Notary public. See Arkansas. IN OTHER STATES—See Arkansas. IN FOREIGN COUNTRIES—See Arkansas. PERSONALLY KNOWN—See Arkansas. WITNESSES—See Arkansas. None to deed, if acknowledged. WILL, two required. SEALS silent, see Arkansas. WOMEN, if married, can convey as if single, separate property. DOWER exists, one-third for life. HOMESTEAD exemption, \$2,500. See Arkansas. POWER OF ATTORNEY, can convey by. ACTION to recover land limited to seven years. DEED recorded is notice. JUDGMENT redemption, one year. Limit of lien, ten years. MECH. Lien, sub-contractor sues in six months, others in nine months, prosecuted without delay. MORTGAGE redemption, one year. TAX redemption, two years.

§ 289. **Indiana**—ACKNOWLEDGMENTS—In this State, by a judge, clerk of a court of record, judge of Superior Court, justice of the peace, notary, mayor, auditor, recorder. In other States the same, also com.

of deeds, for this State, so appointed. In foreign lands, U. S. Ministers, consul, charge d'affaires, any officer so authorized by his country. Officer having no seal must have certificate attached of his circuit court clerk, and must state that the officer was at the time lawfully acting and that his signature is genuine. PERSONALLY known to officer, not required. WITNESSES—None required to deeds; two to wills. PRIVATE seals not required. WOMEN—Age to convey, 18. Conveys by joining her husband in the deed. May dispose of her own property without concurrence of husband. Separate examination not required. If married to an alien, does not bar her rights to hold or convey. POWER OF ATTORNEY—Married woman can join her husband in conveyance by power of attorney acknowledged. ACTION for recovery of land fraudulently conveyed or sold by executor or guardian, limited to five years. If sold by execution creditor, to ten years. DEEDS to be recorded in 45 days. DOWER AND CURTESY abolished, one-third real estate descends to widow in fee simple; if over \$10,000, one-fourth; over \$25,000, one-fifth. ESTATE tail limited to life in being. HOMESTEAD exemption, \$600.00. MORTGAGE redemption limited to one year. MECH. Liens to be filed with County Recorder in 60 days, runs 90 days thereafter. TAX redemption limited to two years. JUDGMENT lien deemed satisfied in twenty years; may renew ten years longer.

§ 290. Iowa—ACKNOWLEDGMENTS—IN THIS STATE, before a court having a seal, the court, judge or clerk, justice of the peace or notary public, the county auditor or his deputy. OUT OF THIS STATE—Before a court of record or the officer holding its seal, commissioner appointed by the Governor of this State, a notary, justice of the peace, the latter must have a certificate showing his authority by the proper authority. OUTSIDE UNITED STATES—Any ambassador, minister, secretary of legation, consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country authorized to issue certificates under the seal of the United States. Any officer of a foreign country authorized by its laws, but his certificate must be authenticated by one of the above United States officers' certificate of acknowledgment. PERSONALLY KNOWN, or positively identified is required. WITNESSES—None to deeds; two to wills. PRIVATE SEALS—Abolished. WOMEN—Age to convey, when married; or majority age of 18. Separate examination not required. DOWER—Either husband or wife can elect to take dower or homestead, one-third to each in fee simple. CURTESY—Abolished. HOMESTEAD—Both join in conveyance, survivor continues in possession. POWER OF ATTORNEY—Married woman can convey by power of attorney. The certificate of a county court clerk is not required to accompany the certificate of acknowledgment of a notary public of other States. ACTION to recover land in a court of record, fifteen years; in a justice court, nine years; for tax, five years; sold by administrator on mortgage, five years. DEED, recording is notice. Mortgage redemption, one year. MECH. LIEN, contractors file with District Court Clerk in 90 days, others in 30 days; right of action limited to two years. TAX redemption limited to two years; nine months' notice by purchaser that time ex-

pires in 90 days. EXECUTION sale redemption limited to one year. JUDGMENT recovery in courts of record twenty years; in courts not of record, in ten years.

§ 291. **Kansas**—ACKNOWLEDGMENTS within this State before some court having a seal, a judge, justice or clerk thereof, or any justice of the peace, notary public, county clerk or register of deeds, a mayor or clerk of an incorporated city. Out of the State, before a court of record, or clerk or officer holding the seal thereof, before a commissioner appointed by the Governor of this State, a notary, justice of the peace, any United States consul resident in any foreign country. If taken before a justice of the peace the certificate of a clerk of a court of record under his hand and court seal must be attached showing the official character of the justice. Proof of execution before acknowledging—If the grantor by death, inability or refusal to attend, and acknowledge, proof of execution may be made by competent testimony, before any court or officer authorized to take acknowledgments. The certificate upon the deed must state the title of the officer, the death, inability or refusal of the grantor, the names of the witnesses by whom proof was made. The witnesses can be subpoenaed by the officer if in the county, by attachment, if necessary. An untruthful certificate subjects the officer to indictment and fine according to damage or value of the property. PERSONALLY KNOWN must be shown in the certificate. WITNESSES not required except to prove a deed; two to wills. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 18; may convey own property as if unmarried. Separate examination. DOWER and CURTESY—Abolished. Husband and wife share equally; community interest. HOMESTEAD—Husband and wife each entitled to; must join in conveying; exemption, 160 acres; in city, one acre improved. POWER OF ATTORNEY—Conveyance by must be acknowledged, signed and recorded same as a deed. ACTION for recovery of land, on execution, limited to five years; after sale, on administrator's sale, in five years; after forcible entry, in two years; after legal disability, in two years; other conditions, fifteen years. DEED, recording is notice. MORTGAGE redemption, fifteen to eighteen months. MECH. LIEN, claim to be filed in four months; sale one year from filing; redemption fifteen to eighteen months. TAX redemption in three years. JUDGMENT, redemption in fifteen to eighteen months.

§ 292. **Kentucky**—ACKNOWLEDGMENTS—In the State, before County Court clerk or notary public. Outside, before County Court clerk, his deputy, a notary, mayor, Secretary of State, commissioner of deeds for this State, or a judge, all under official seal. Foreign, before a minister, consul or secretary of legation of the United States, the secretary of foreign affairs, judge of a superior court, under seal. PERSONALLY known to officer, statutes do not require. WITNESSES—Two to a deed not acknowledged; two to wills. PRIVATE SEALS—Not necessary. WOMEN—Age to convey, 21; may convey by joining with husband. Separate examination and contents explained. She must freely and willingly acknowledge. If in the State, officer need only state that it was acknowledged before him. DOWER and CURTESY—Each one-

third for life. HOMESTEAD—Conveyed by jointure of husband and wife. Exemption, \$1,000. POWER OF ATTORNEY—Married women may so convey; must be acknowledged and signed same as a deed. ACTION to recover land limited to fifteen years; may be extended to thirty years. Married woman or her heirs in three to ten years. DEEDS, when recorded are notice. ESTATES TAIL abolished. MORTGAGE redemption limited to one year. MECH. LIEN to be filed in six months with county clerk; action to be brought in one year from filing. TAX redemption limited to two years. JUDGMENT lien limited to fifteen years. TRUST DEEDS used as mortgages.

§ 293. Louisiana—ACKNOWLEDGMENTS taken before clerks of the Supreme Court and their deputies, notaries public. Out of the United States, before ambassadors, ministers, charge d'affaires, secretaries of legation, consul-generals, consuls, vice-consuls, commercial agents, all under their official seals PERSONALLY known by the officer taking is required. WITNESSES—Two required to deeds. Witnesses to a will olographic, none; public—nuncupative, three, residents; five, if non-residents; private, nuncupative, open, five if residents; seven if non-residents; mystic—sealed, three. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 21; husband's consent required. Separate examination. DOWER AND CURTESY—Survivor has usufruct during life; community system exists. HOMESTEAD allowed so long as occupied; vacating loses it. Exemption, \$1,000. POWER OF ATTORNEY may be granted with husband's consent. MORTGAGE and other liens redeemed in ten years if agreed to.

§ 294. Maine—ACKNOWLEDGMENTS before a justice of the peace, or notary public, or women otherwise eligible under the constitution and appointed for the purpose by the Governor with the consent of council in the State, or any clerk of a court of record having a seal, or notary public within any of the United States, or before a minister or consul of the United States, or notary public in any foreign country. Seal of court or notary to be affixed. PERSONALLY known, or identified to officer, should be, statute is silent. WITNESSES not required to deeds; three to wills. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, married woman of any age may convey her own separate property without jointure of husband. Separate examination not required. DOWER and CURTESY—Abolished; each inherit one-half if there are no children; one-third if there are children. POWER OF ATTORNEY to convey, to be signed, sealed, acknowledged and recorded same as a deed. A deed conveying lands in more than one county lost before recording, or recorded in the wrong county or district and lost, a certified copy from the registry where recorded, may be recorded in any other county or district. A person holding an unrecorded deed or other evidence of title, may be given personal written notice to record it, by anyone having an interest in it; a failure to comply within thirty days permits compulsion by complaint to a justice of the Supreme Court. No conveyance of an estate for more than seven years is effectual against others unless recorded. There can be no estate in lands other than tenancy at will unless in writing. When a grantor

refuses to acknowledge his deed, the grantee may leave a copy of it with the register and for forty days it is a record. A notary public or justice of the peace, where grantor or land is, may summon the grantor at a time and place stated, to hear testimony, date of deed, names of parties and witnesses to be mentioned in summons. If the officer is satisfied that the deed was executed he shall so certify in the deed. It may then be recorded. A lost or destroyed deed may be replaced by copy left with the register for ninety days; he may prove it by depositions in perpetuum if parties in interest reside outside the State. A justice of the Supreme Court may order notice by publication. ACTION for the recovery of lands limited to twenty years. ESTATE tail limited to two lives in being. HOMESTEAD exemption, \$500. Conveyed by jointure. JUDGMENT Lien limited to twenty years. MECHANIC'S LIENS to be filed in ninety days. MORTGAGE lien limited to twenty years. Mortgage redemption limited to three years or one year by contract. Tax redemption, two years.

§ 295. **Maryland**—CONVEYANCE—No estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged and recorded. No words of inheritance necessary to create estate in fee simple in a deed. Deeds to be recorded in six months. Deeds to be valid must be acknowledged and recorded. ACKNOWLEDGMENTS IN THE STATE—Within the county or city of the lands, may be taken before a justice of the peace, a judge of the orphans, circuit, Baltimore Supreme Court, or notary. Within the State, before any justice of the peace, his official character being certified to by the clerk of the circuit or superior court, under seal, any judge of circuit, orphans, Baltimore City or circuit court, where the grantor may reside. Supreme, orphans' courts or notary, each under their official seals. IN OTHER STATES, before a notary public, a judge of any United States Court, a judge of any State or territorial court having a seal, a commissioner of this State to take acknowledgments. Taken outside the United States, before any minister, consul-general, consul, deputy consul, vice-consul, consular agent, or consular officer of the United States. A notary public, a commissioner of this State to take acknowledgments. Party to state that he acknowledged the deed to be his act. Officer's name, title and date to be contained in the acknowledgment. PERSONALLY known or identified to the officer, should be. WITNESSES—One to deed, two to a will. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 18; married women of any age can convey property. Separate examination of wife not required. Married woman may convey her separate property without husband joining. DOWER and CURTESY—One-third to each for life; conveyed by jointure in deed. HOMESTEAD—None exists. POWER OF ATTORNEY—Conveyance thus made by acknowledging, signing and recording, same as a deed. ACTION for land limited to twenty years. MECH. lien to be filed in six months; claim holds for five years after filing. TAX redemption limited to twelve months. JUDGMENT lien limited to twelve years.

§ 296. **Massachusetts**—ACKNOWLEDGMENTS to be made before a justice of the peace or notary public in this State. If in another State, before a justice of the peace, notary public, magistrate or commissioner appointed by the Governor for that purpose. If in a foreign country, before such justice, notary, magistrate, or commissioner or a minister or consul or consular officer of the United States. Taken in other States for record or to be used in evidence in this State, may be taken before any officer of that State authorized by its laws and certified to by the Secretary of State under the State seal, or by the clerk of a court of record of the county, stating that the officer was authorized at the time of taking to take, that he is acquainted with his handwriting and believes the signature genuine. The acknowledgment of one grantor is sufficient. PERSONALLY known to officer required. WITNESSES—None to a deed; proof requires one at least; a will, three. PRIVATE SEALS, not required. WOMEN—Married women can convey as if single. Separate examination of not required. DOWER and CURTESY—One-third to each for life, are conveyed by jointure. HOMESTEAD—Conveyed by jointure; exemption, \$800. POWER OF ATTORNEY—Married women may so convey realty when acknowledged, signed and sealed, same as a deed. A deed executed and delivered by the person or by his attorney, shall be sufficient to convey real estate. Conveyance of an estate in fee simple, fee tail, or for life, or a lease for more than seven years from the making, shall not be valid as against any person other than the grantor or lessor and his heirs and devisees and persons having actual notice of it, unless recorded in the county registry. Deeds shall not be recorded unless the certificate of acknowledgment is indorsed on or attached. Deeds and other instruments recorded in one county where the land lies may be recorded in other counties where it is also situated, from any office copy. ACTION to recover land limited to twenty years. ESTATE tail abolished. MORTGAGE redemption limited to three years. MECH. LIEN claim to be filed in thirty days; ninety days after must be enforced; redeemed in one year. TAX redemption limited to two years. JUDGMENT redemption limited to one year from sale.

§ 297. **Michigan**—Refusal of grantor to acknowledge deed can be evidenced by summoning him before a justice of the peace in the presence of the subscribing witnesses. If the witnesses are dead the deed may be proved by the grantor's or witnesses' handwriting before a court of record in this State. In the meantime the deed may be filed for record with the county register of deeds, where the lands are, which shall for the space of thirty days thereafter, in case of proceedings before a justice and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded. CONTRACTS for the sale of lands may be acknowledged the same as deeds. Written instruments, excepting bills of exchange, promissory notes and wills, may be proved or acknowledged the same as deeds. Officer taking, to sign his name and title of his office. ACKNOWLEDGMENTS, before whom in

this State: Any judge, commissioner of a court of record, notary public, justice of the peace or a master in chancery. The officer to certify the same under his hand with the date. In another State, before any officer authorized by that State, to be signed by the officer and certificate attached by his State secretary or clerk of county court under their seals, stating that such officer at the time of taking was duly authorized to take and that they are well acquainted with his handwriting and verily believe the signature affixed to be genuine. This is not necessary if the officer is a notary and certifies under his official seal. If taken without the United States, by any notary, before any minister, commissioner, consul, charge d'affaires or consular agent of the United States resident, certified under their seal of office. **PERSONALLY** known or identified to officer, is required. **WITNESSES**—Two to deeds, two to wills. **PRIVATE SEALS**—Scroll required. **WOMEN**—Age to convey, 18. Can convey same as if single. Separate examination not required; may convey as if unmarried. **DOWER AND CURTESY**—One-third for life; conveyance made by jointure in the deed. **HOME-STEAD**—Exemption, \$1,500; conveyed by wife joining in the deed. **POWER OF ATTORNEY**—Property may be conveyed by, when acknowledged and signed jointly and recorded same as a deed. **ACTION** to recover land limited to twenty years. **DEEDS** bear notice when recorded. **ESTATES** tail abolished. **MORTGAGE** redemption limited to twelve months; action for recovery limited to fifteen years. **MECH. LIEN**—Must file claim in sixty days. **TAX** redemption in six months. **JUDGMENT** lien limited to ten years. **TRUST DEEDS** used for mortgage.

§ 298. **Minnesota**—**ACKNOWLEDGMENTS**—**WHO MAY TAKE**—Legislators, judges of supreme, district and probate courts, clerks of same, notaries, justices of the peace, registers of deeds, court commissioners, and county auditors, clerks of federal courts, town and city clerks, village recorders, within their jurisdiction and with their official seals, commissioned officers for American soldiers or sailors. **IN OTHER STATES**—The chief and associate justices of the United States Supreme Court, judges of the district courts of the United States, judges of any court of record of any of the States, clerks of same, notaries, justices of the peace, commissioners appointed by the Governor of this State. All within their jurisdiction. Unless party certifying has an official seal, the certificate must be attached of the clerk of the county court, showing their authority to certify. **FOREIGN**—May be executed according to the laws of that country and acknowledged before any notary public, United States minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul, or any consular or diplomatic officer or their deputies and vice-representatives, including deputy consuls general, vice-consuls general, and deputy commercial agents appointed to reside therein. The same to be certified thereon by the officer taking, under his hand, and if taken before a notary public under his seal of office. Provided, that any such deed, duly signed and sealed with two witnesses, and acknowledged as aforesaid, shall be deemed good and sufficient. **PERSONALLY** known or

identified to officer is required. WITNESSES—Two required to a deed, two to a will. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 15; married women can convey with husband. Separate examination of wife required. DOWER and CURTESY—Abolished. HOME-STEAD—Exemption, 80 acres and dwelling; one lot in city; one-half acre in a town; can be conveyed by joint deed of husband and wife. POWER OF ATTORNEY, can so convey by jointure, if acknowledged, signed and recorded as by deed. ACTION for the recovery of land limited to fifteen years. ESTATE tail limited to lives in being. DEED record is notice. MORTGAGE redemption limited to twelve months; foreclosure limited to fifteen years. MECH. LIEN claim to be filed in one year with county district court clerk; can redeem before sale. TAX redemption, three years; action to recover limited to six years. JUDGMENT lien limited to ten years.

§ 299. Mississippi—ACKNOWLEDGMENTS—Every conveyance of property must be acknowledged or proved by an authorized officer to entitle it to record. In this State, may be taken by any judge of a United States court, any judge of the Supreme or Circuit Court, or any chancellor, or any clerk of a court of record, a notary public under his official seal, any justice of the peace, mayor of any city, town, or village, or member of the board of supervisors, whether the property be in his county or not. If in another State, before the chief justice of the United States or an associate justice, any United States circuit or district judge or any United States judge, any Supreme or Superior Court judge of the State, any justice of the peace of such State or territory whose official character shall be certified under the seal of some court of record in his county, or any commissioner in such State appointed by the Governor of this State to take acknowledgments, any notary or clerk of a court of record having a seal of office. Same shall be as good and effectual as if the certificate of acknowledgment or proof had been made by a competent officer in this State. If in a foreign country, before any court of record, the mayor or chief magistrate of any city, borough, or corporation where the party resides or may be, or any commissioner residing in such country appointed by the Governor, any ambassador, foreign minister, secretary of legation or consul of the United States. The officer's certificate to state that the party, or the party and witnesses were identified before him, that they acknowledged the execution, or that it was proved by the witness, same to be as effectual as if done in this State. PERSONALLY KNOWN, or identified to officer required; also personal appearance necessary. WITNESSES—One to a deed; two to a will. PRIVATE SEALS are abolished. WOMEN—Married, can convey property; unmarried, 21 years of age, can convey; wife to be described as such. Separate examination not required; conveyed as if she were sole. DOWER and CURTESY—Abolished. HOME-STEAD—Exemption, \$2,000; conveyed by jointure of husband and wife. POWER OF ATTORNEY—Conveyances may be made by, when signed, acknowledged and recorded same as deeds. PROOF—If the grantor and witness be dead or absent, preventing personal attendance, the instrument may be proved by the oath of any one, who on examination

before the competent officer can prove the handwriting of the witness; when such cannot be had, the handwriting of the grantor may be proved; the officer certifying accordingly. ACTION for recovery of land limited to ten years. DEED recorded in notice. ESTATE TAIL limited to lives in being. MORTGAGE redemption limited to six months. MECH. LIEN suit to begin in six months after due. TAX redemption limited to two years. JUDGMENT lien limited to seven years; can redeem in two years.

§ 300. **Missouri**—ACKNOWLEDGMENTS—IN THIS STATE, before any court having a seal, a judge or clerk thereof, notary public, justice of the peace of the county where the land is. IN ANY OTHER STATE, before any notary public, any United States or State court, having a seal, or the clerk of such courts or any commissioner appointed by the Governor of this State. OUTSIDE THE UNITED STATES, before any court of the country having a seal, mayor or chief officer of any town or city having a seal, any minister or consular officer of the United States or any notary having a seal. Falsely certifying, or aiding in a false acknowledgment, by an officer, shall be deemed forgery in the second degree. PERSONALLY known, to the officer, required or proved by two credible witnesses, who must sign with address. WITNESSES—Two to a will. PRIVATE SEALS—Not required. WOMEN—Age to convey, 18; can convey their realty. Separate examination not required. DOWER—May convey by joining the husband. CURTESY—One-third each for life. HOMESTEAD—Exemption, \$1,500; in large cities, \$3,000; conveyed by jointure of husband and wife. POWER OF ATTORNEY—Married women may convey by power of attorney, by executing and acknowledging jointly with their husband. ACTION for recovery of land limited to ten years. MORTGAGE redemption limited to one year. MECH. LIENS claim to be filed in six months; laborer's in sixty days; action in ninety days. TAX redemption limited to two years. Judgment Lien, three years; action barred in ten years.

§ 301. **Montana**—ACKNOWLEDGMENTS—IN THE STATE—May be made anywhere in the State before a justice or clerk of the Supreme Court, or a judge of the District Court, may be made within the officer's place of appointment or election before a clerk of a court of record, a county clerk, a notary public, a justice of the peace. IN ANY OTHER STATE, and within the jurisdiction of the officer, before a justice, judge or clerk of any United States court of record, a justice, judge or clerk of any State court of record, a commissioner appointed by the Governor of this State, a notary public, any other officer authorized by the laws of that State. OUTSIDE THE UNITED STATES—May be made without the United States before a minister, commissioner, or charge d'affaires of the United States resident or accredited to that country; before a United States consul, vice-consul, or consular agent resident in that country, a judge of a court of record, a commissioner appointed by the Governor, a notary public, any deputy allowed these officers by law. Officers must authenticate by affixing their signatures and name of office and their official seals, if they have a seal, otherwise they

must show by what authority they are acting. Justices of the peace, acting outside of their county, must have their certificate accompanied by a certificate under the hand and seal of the clerk of their county showing that he was authorized to take and that the clerk is acquainted with his handwriting and believes the signature genuine. PERSONALLY known or identified to the officer is required. WITNESSES—None to a deed; one to a proof; two to wills. PRIVATE SEALS—Abolished. MARRIED WOMEN can convey same as if single. Separate examination not required. DOWER—Widow entitled to. CURTESY—Not allowed. HOMESTEAD—Exemption, \$2,500; conveyed by jointure of husband and wife. POWER OF ATTORNEY, signed and acknowledged, same as a deed. Married women may so convey. Proof of the execution of an instrument not acknowledged may be made by the party executing it or by a subscribing witness or by other witnesses. The subscribing witness must be personally known or identified on oath to the officer. The execution may be established by proof of the handwriting of the party and of the witness when the parties and witnesses are dead or out of the State or their residence is unknown, when the witness conceals himself or cannot be found or the refusal of the witness to testify one hour after his appearance. ACTION to recover land limited to ten years; in courts not of record, five years. Estate tail abolished; limited to life in being. JUDGMENT lien limited to ten years. MECH. Lien claims to be filed in ninety days. MORTGAGE lien limited to ten years. TAX redemption, three years.

§ 302. **Nebraska**—ACKNOWLEDGMENTS—Grantor must state it to be "his voluntary act and deed." Taken in this State, before a judge or clerk of any court, a justice of the peace, or a notary public, within their jurisdiction. If in another State, before an officer there authorized, or by a commissioner appointed by the Governor of this State. The officer certifying must use his official seal, otherwise the certificate of a clerk of a court of record, under its seal, or other proper officer must be attached to the instrument showing that the officer taking was at the date such officer, that he is well acquainted with his handwriting, that he believes the signature is genuine, that the instrument is executed and acknowledged according to the laws of the State. IN A FOREIGN COUNTRY it may be executed according to the laws of the country and acknowledged before a notary public, or a United States minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul appointed to reside there. The acknowledgment shall be certified thereon by the officer, and if a notary public his seal shall be affixed to such certificate. PERSONALLY KNOWN or identified to the officer. WITNESSES—One to a deed, two to a will. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 16. Married women convey as if single. Separate examination not required. DOWER AND CURTESY—One-third to each for life; conveyed by jointure. HOMESTEAD—Exemption, \$2,000; conveyed by jointure of husband and wife. POWER OF ATTORNEY to convey lands must be proved and acknowledged, signed and recorded same as a deed. FRAUDULENT ACTS of officers shall be punished by

a fine not exceeding \$500 and imprisonment not exceeding one year, and liable for damages sustained. ACTION to recover land limited to ten years. DEED when recorded is notice. MORTGAGE decree is a final judgment. MECH. LIEN claim to be filed in four months; holds two years; can redeem two years before sale. TAX redemption, two years. Judgment redemption, two years.

§ 303. Nevada—ACKNOWLEDGMENTS—Must be certified on instrument and under officer's hand and official seal. Who can take—County recorders, a judge or clerk of a court having a seal, a notary public or justice of the peace, provided, if in another county, the latter shall have attached to his certificate the certificate of the clerk of the District Court of his county showing his official character. In other States, by a judge or clerk of any United States court, or of any State or territorial court having a seal, by a notary public, by any commissioner appointed by the Governor of this State for that purpose, by a justice of the peace if accompanied by a certificate of a clerk of his county court of record having a seal showing the justice's official character and authenticating his signature. If without the United States, by a judge or clerk of a court having a seal, by a notary or any United States minister, consul or commissioner resident. Each officer authorized to take acknowledgments shall keep a record of same in a book for that purpose, entering the date taken, the date of the instrument, its name and character, names of parties thereto, to be open for inspection. A failure to comply subjects officer to a penalty of from fifty to five hundred dollars and liable on his bond for damages sustained. PERSONALLY known to officer or proved by witness. WITNESSES—None required to a deed; two to a will. PRIVATE SEALS—Abolished. WOMEN—Age to convey—Marriage permits conveyance at any age. Wife must join husband in conveyance of her separate estate. SEPARATE examination of a married woman is required. DOWER AND CURTESY—Abolished. Community system exists. HOMESTEAD—\$5,000. Conveyed by jointure. POWER OF ATTORNEY—Conveyed same as by deed, signed and acknowledged separately. ACTION to recover land limited to ten years. DEED when recorded is notice. MORTGAGE redemption, six months. MECH. Liens, contractor to file claim in sixty days; all others in thirty days. TAX redemption in six months. JUDGMENT redemption in six months; limitation of lien, six years.

§ 304. New Hampshire—ACKNOWLEDGMENTS—Taken before a justice, notary, commissioner, a minister or consul of the United States in a foreign country. PERSONALLY KNOWN to officer not required. WITNESSES—Two to a deed, three to a will. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 21. If either are not of age conveyance is only by jointure. Separate examinations not required. DOWER AND CURTESY—One-third for life. Conveyance by jointure. HOMESTEAD—Exemption, \$500. Conveyance by jointure. POWER OF ATTORNEY—Can so convey same as by deed. No deed of bargain and sale, mortgage, nor conveyance of real property, nor any lease for more than seven years shall be valid against any person but the grantor and his heirs unless attested, acknowledged and recorded. Same with

power of attorney for conveyance of real estate. Person interested may have his deed or lease recorded in more than the one original county. Proof of execution of deed may be made by one or more of the subscribing witnesses before any court of record in the State. If not accessible, proof may be made on oath of two witnesses acquainted with the grantor's handwriting. If the grantor or lessor is a resident of this State notice of the time and place of proving the same, signed by a justice, shall be delivered to him or at his abode fourteen days prior to the time of proving. A justice may, upon complaint of an interested party, issue a warrant to compel party having an unrecorded deed to place same on record or commit him to jail until the request is complied with. ACTION to recover land limited to twenty years. DEED when recorded is notice. If not acknowledged may be recorded sixty days. MORTGAGE redemption limited to two months. MECH. LIENS redemption, ninety days. TAX redemption, one year; highway tax, two years. JUDGMENT redemption in thirty days.

§ 305. **New Jersey**—ACKNOWLEDGMENTS—Officer must make known the contents of the instrument to the party acknowledging and they must certify it as their voluntary act and deed. IN THIS STATE, before the State chancellor, commissioner of deeds, justices of the Supreme Court, a master in chancery, a judge of a Court of Common Pleas, deputy surrogate, the certificate shall be written upon or under the instrument. Same shall be received in evidence in any court of the State. Any Common Pleas judge may take an acknowledgment for land in any county in the State; county clerks, register of deeds. IN ANOTHER STATE—Before the Chief Justice or Justices of the United States Supreme Court, a master in chancery for this State or any attorney of this State, any United States Circuit or District Judge, any judge or justice of the Supreme or Superior Courts of any State or their chancellors, a commissioner of deeds for this State under his seal of office, any mayor or chief magistrate of any city, borough or corporation under their seal, a judge of Common Pleas, each to apply certificate of his office and authorization under his court or official seal. IN ANY FOREIGN COUNTRY, commissioner of deeds for New Jersey, or master in chancery for this State, any mayor or chief magistrate of any city, duly certified under the city seal, a judge of any Court of Common Pleas, and shall be as effectual as if made before the chancellor of this State, provided, that when made before a judge of a Court of Common Pleas a certificate under the seal of the State or of the County Court where made shall be attached stating the officer is such. PERSONALLY known or identified by subscribing witnesses to the officer is required. WITNESS—Two to deed, three to a will. PRIVATE SEAL—Scroll required. WOMEN—Age to convey, 18 years. Separate examination required, and sign, seal and deliver same as her voluntary act and deed freely without fear, threats or compulsion of her husband. DOWER AND CURTESY—One-third each for life and are conveyed by jointure. HOMESTEAD—Exemption, \$1,000. Transferred by jointure. POWER OF ATTORNEY to convey must be by jointure of husband and wife, acknowledged, signed and recorded as by deed. ACTION to recover land

limited to twenty years. MORTGAGE redemption limited to six months. TAX redemption limited to one year. JUDGMENT lien limited to twenty years.

§ 306. **New Mexico**—CONVEYANCE—Any person or body politic holding any right or title to real estate in this territory may convey the same, subscribed to by the person transferring or by his legal agent or attorney. ACKNOWLEDGMENTS may be made, IN THE STATE before a clerk of the District Court, a judge or clerk of the Probate Court, under the court seal, a notary public, or a justice of the peace. IN OTHER STATES—Before a clerk of a court of record having a seal, a commissioner of deeds appointed under the laws of this Territory or a notary public. OUTSIDE THE UNITED STATES—Before a United States minister, commissioner, charge d'affaires, consul-general, consul, vice-consul, deputy consul or agent, resident in the country, a notary public, having a seal. PERSONALLY KNOWN to the officer or proved by two reliable witnesses and so stated. WITNESSES—None to deed; two to a will. PRIVATE SEALS—Not required. WOMEN—A married woman uniting with her husband in the execution shall be described as his wife. Her acknowledgments shall be taken and certified as if she were sole. Not necessary to join with him. No separate examination is required. A married woman need not personally appear before the officer. She may sign and convey any conveyance through an attorney, who may be authorized in writing by a power of attorney executed and acknowledged by herself and husband as authorized by law. DOWER AND CURTESY—Abolished. HOMESTEAD—Exemption, \$1,000; conveyed by jointure of husband and wife. POWER OF ATTORNEY shall be certified and registered, and revoked only in writing and by record. ABSTRACTS under the seal of any title abstract company incorporated and doing business in this territory shall be received in all courts of this territory in evidence. A false certificate by an officer of such company or any person shall, upon conviction, subject to a fine of not more than five hundred dollars or imprisonment in the penitentiary not to exceed three years, or both. Foreigners shall have full power to acquire and hold real estate by deed, will or inheritance when acquired in good faith same as a citizen of the United States. Also to aliens to sell, assign and transfer same. ACTION to recover land limited to ten years. MORTGAGE redemption limited to one year. MECH. Lien redemption, one year. TAX redemption, three years. JUDGMENT redemption, one year.

§ 307. **New York**—ACKNOWLEDGMENTS of deeds in the State may be made before a justice of the Supreme Court anywhere in the State, before a judge, clerk, deputy clerk, special deputy clerk of a court, a notary, mayor, or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge or commissioner of deeds, within the district of their appointment. IN OTHER STATES, before a judge of the Supreme Court, of the Circuit Court of Appeals, or of the District Court of the United States, a judge of the Supreme, Superior or Circuit Court of a State, a mayor of a city, a commissioner appointed for that purpose by the Governor of the State, any officer authorized by the

laws thereof to take acknowledgments, each acting within their jurisdiction or court. When taken by a commissioner appointed by the Governor for a city or county within the United States, and without this State, the certificate must also state the day on which and the town and county or the city in which it was taken. IN FOREIGN COUNTRIES, before a United States ambassador, minister plenipotentiary, minister extraordinary, minister resident, or charge d'affaires, residing and accredited within the country, a consul-general, vice-consul-general, deputy consul general, vice-consul or deputy consul, a consular or vice-consular agent, or a consul or commercial or vice-commercial agent of the United States residing in the country, a commissioner appointed by the Governor and acting within his jurisdiction, a person specially authorized for that purpose by a commission under the seal of the Supreme Court issued to a reputable person residing in or going to the country, under seal. If within the Dominion of Canada, it may also be made before any judge of a court of record, or before any officer of such dominion authorized by the laws thereof. If within the United Kingdom of Great Britain and Ireland or the dominion thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein, or a notary. The certificate must be under the hand and seal of the officer taking, or the seal of the office to which he is attached. A clerk's certificate authenticating a certificate of acknowledgment taken before a judge or court of record in Canada must specify that there is such a court, that the judge before whom the acknowledgment was taken was, when it was taken, a judge thereof, that such court has a seal, that the officer authenticating is clerk thereof, that he is well acquainted with his handwriting and believes his signature is genuine. An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that at the time of taking the acknowledgment or proof the officer taking it was duly authorized to take the same, that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office, and that he believes it genuine. If the original certificate is required to be under seal he must also verify that. A certificate of, made within the State, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. This does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pultney estate, lawfully authorized to convey real property. In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively: Where the original certificate is made by a commissioner appointed by the Gov-

ernor, by the Secretary of State, where made by a judge of a court of record in Canada by the clerk of the court, where made by the officer of a State of the United States or of the Dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein by the Secretary of State of the State, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when certificate was made, or by the clerk of any court of that county having by law a seal. The officer within State can compel the subscribing witness to attend and testify before him concerning the execution of the conveyance. Refusal to testify forfeits to the person injured one hundred dollars and commitment to prison by the officer, there to remain without bail and without liberties of the jail until he answers under oath. The officer must indorse upon or attach to the instrument a certificate, signed by himself, stating all matters required to be done, known or proved, together with the name and substance of the testimony of each witness examined, and if a subscribing witness, his place of residence. MARRIED WOMEN may acknowledge the same as if unmarried. Age 21. OFFICER MUST know the party acknowledging or have satisfactory evidence that the party making it is the one who executed the instrument. When proof is made by a subscribing witness he must state his residence, that he knows the party. Officer must know the witness to be the subscribing witness. WITNESSES—None if acknowledged; two to will. PRIVATE SEAL—Scroll required. DOWER—One-third for life for widow; conveyed by jointure. HOMESTEAD—Exemption, \$1,000. POWER OF ATTORNEY to convey by married woman does not require husband's concurrence, but she must acknowledge and sign same in a private examination. ACTION to recover land limited to twenty years. ESTATES TAIL limited to lives of two in being. HUSBAND and wife can convey to each other. JUDGMENT liens limited to twenty years. MECH. Liens, action expires in one year; redeemed before action. MORTGAGE lien limited to twenty years. TAX redemption, one year. RECORDING is notice; deeds void unless recorded.

§ 308. North Carolina—PROOF OR ACKNOWLEDGMENTS—All deeds conveying lands, letters of attorney or other instruments requiring registration must be offered for probate, or a certified copy thereof must be exhibited before the clerk of the Superior Court of any county. When the grantor or maker, or subscribing witness, resides in the county where the land lies, the instrument must be acknowledged or proved on the oath of such subscribing witness before the clerk of the Superior or of the inferior court, or before a notary, justice of the peace of the county, who shall certify thereon, it shall then be admitted to probate and registration. If the grantor or subscribing witness reside in another county of the State it must be acknowledged by the grantor or proved by the oath of such subscribing witness before a judge of the Supreme or of the Superior Court, or before the clerk of the Superior Court or of the inferior court, or a notary, or justice of the peace of the county where the grantor or witness resides. If before a justice of the peace, the clerk of the Superior Court of that county must certify upon it the

fact of acknowledgment or proof, and that such justice was, at the time of taking, an acting justice of the county, and the clerk of the Superior Court of the county where the land lies shall order the same, with his certificate attached, to be registered. IF THE GRANTOR OR WITNESS RESIDE in another State it may be taken before a judge, clerk of a court of record, notary public having a seal, mayor of a city having a seal, or justice of the peace of that State. The certificate of the judge, clerk of the court of record must be under the seal of the court, the mayor or notaries under their respective seals. If in proper form the justice's certificate must be certified to by the clerk of his County Court, stating that the justice was at the time of the taking an acting justice of said county of the State, that the signature is in his own proper handwriting. If the certificate is in proper form the clerk shall order it to be recorded. IF THE GRANTOR AND WITNESS RESIDE OUTSIDE THE UNITED STATES it may be personally acknowledged by the grantor or proved on oath of the witness before the chief magistrate of any city in the country where these parties reside, or before any ambassador, minister, consul or commercial agent of the United States, and if certified under the corporate seal of the chief magistrate or of the official seal of any of the others with their certificate affixed the clerk shall order it recorded with his certificate in addition to that of the others. PERSONALLY KNOWN—Personal appearance necessary. Personal knowledge of is not required. WITNESSES—one or more to a deed; two to a will. PRIVATE SEAL—Scroll required. WOMEN—Age to convey, 21 years. Married women can convey their separate property. Separate examination of married woman is necessary. Also necessary to a chattel mortgage. DOWER AND CURTESY—One-third life. Conveyances made by jointure of husband and wife. HOMESTEAD—Exemption, \$1,000. Conveyed by jointure. POWER OF ATTORNEY—Can so convey. Must be jointly by husband and wife. Action to recover land limited to twenty years. Estate tail abolished. Judgment, Mech. Lien, mortgage Lien, limited to ten years. Tax redemption, one year.

§ 309. **North Dakota**—ACKNOWLEDGMENTS—IN THE STATE, before a justice or clerk of the Supreme Court or notary public. Within the jurisdiction of a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, county auditor, or a United States Circuit or District Court commissioner, or county auditor. Without this State but within the United States and within the officer's jurisdiction, a justice, judge or clerk of any court of record, a notary or any officer so authorized by the laws of his State, a commissioner of deeds appointed by the Governor of this State. Without the United States, before a minister, commissioner or charge d'affaires of the United States resident and accredited in the country, a consul, vice-consul, or consular agent resident in the country, a judge, clerk, register or commissioner of a court of record, a notary public, any officer so authorized by the laws of the country. Officer must authenticate, by using their seal of office if they have one, their signature and title. An acknowledgment before a justice of the peace to be used outside his county must be

accompanied with the certificate of a clerk of a county court or any other court of record under his hand and seal of office stating that such justice at the taking was authorized to be the same and that the clerk is acquainted with his handwriting and believes the signature genuine. Cannot be taken by a party in interest. PERSONALLY known to the officer or proved by witnesses is required. WITNESSES—Two to will; none to a deed. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 18. Convey same as if single. Separate examination not required. DOWER AND CURTESY—Abolished. HOMESTEAD—Exemption, \$5,000. Conveyed by jointure of husband and wife. POWER OF ATTORNEY. Conveyance so made as by deed. ACTION to recover land limited to twenty years. MORTGAGE redemption limited to one year. MECH. LIEN—Claim to be filed in ninety days; suit to begin in thirty days after. TAX redemption limited to three years. JUDGMENT lien redemption in one year; lien limited to ten years.

§ 310. Ohio—ACKNOWLEDGMENTS—IN THE STATE, before a judge of a court of record or its clerk, county auditor, surveyor or notary, mayor or justice of the peace, certified and signed on document, a commissioner of deeds for Ohio or United States consul. PERSONALLY KNOWN or proved to the officer and personal appearance necessary. WITNESSES—Two required to deeds; two to a will. PRIVATE SEALS—Abolished, except corporations. WOMEN—Age to convey, 16; may convey as if unmarried. Separate examination not required. DOWER—Exists as to widow and widower, one-third the estate for life. CURTESY—Abolished. POWER OF ATTORNEY acknowledged same as deed, etc. ACTION to recover land limited to twenty-one years. If a disability, ten years after the removal. ESTATE TAIL limited to life in being. HOMESTEAD exemption, \$1,000. DEED is notice when recorded. MORTGAGE redemption limited to thirty days. TAX redemption limited to two years. JUDGMENT redemption before thirty days; lien limited to five years.

§ 311. Oklahoma—ACKNOWLEDGMENTS may be taken IN THE TERRITORY before a justice of the peace, notary public, county clerk, or clerk of the District Court, Probate Judge. OUTSIDE THE TERRITORY, by any notary public, clerk of a court of record, commissioner of deeds appointed by the Governor for this territory. IN A FOREIGN COUNTRY, by any court of record or its clerk, or any United States consul, must be taken under the officer's seal, except justices of the peace. PERSONALLY known or proved to officer is required. WITNESSES—None required to deeds; two to a will. PRIVATE SEALS—Dispensed with. WOMEN—Age to convey, 18 years. Wife may convey as if unmarried. Separate examination not required. DOWER AND CURTESY—Abolished. Contract as if single. HOMESTEAD—Exemption, 160 acres; in city, one acre. Released by wife joining husband in deed. POWER OF ATTORNEY to convey real estate must be signed, acknowledged and recorded same as a deed. Release of mortgage may be made on the margin of the record by the holder or his agent or it may be made on a separate instrument signed and acknowledged and recorded. ACTION to recover land limited to fifteen years. MORTGAGE

redemption one year. MECH. Lien suit brought in one year. TAX redemption, two years. JUDGMENT lien limited to five years.

§ 312. **Oregon**—ACKNOWLEDGMENT—TAKEN IN THIS STATE by a judge of the Supreme Court, county judge, justice of the peace or notary in the State, certified and dated under their hand. In any other State, according to its laws and acknowledged before any judge of a court of record, justice of the peace, notary public, or other authorized officer by the State's laws, or a commissioner appointed by the Governor of this State for the purpose. Unless taken before a commissioner appointed by the Governor of this State for the purpose, or a notary certified under his official seal, or before the clerk of a court of record certified under the seal of the court, it shall have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district, under the seal of his office, that the person whose name is subscribed to the certificate was at the date such officer, that he believes the signature genuine, that the deed is executed according to the law of the State. In a foreign country it may be executed to the law of the country and acknowledged before a notary or a United States minister plenipotentiary or extraordinary, minister resident, charge d'affaires, commissioner, or consul, appointed to reside there and certified under his hand. The notary's seal shall be attached to his acknowledgment. TELEGRAPHIC copy of acknowledgment may be admitted to record. PERSONALLY known or identified to officer by subscribing witness required, and personal appearance. WITNESSES—Two to a deed or will. PRIVATE SEAL—Scroll. WOMEN—Age of, 18. May convey by joining husband, stating she executes it freely and voluntarily, any time after marriage. Out of the State she can execute same as if single her separate property. Separate examination not required. DOWER AND CURTESY—Husband and wife have a one-third life interest in each other's property. Conveyance by jointure. HOMESTEAD—\$1,500 as long as occupied. Conveyance jointly. POWER OF ATTORNEY—Can so convey same as by deed if unmarried; if married, by jointure. Either can convey their separate property without jointure. ACTION to recover land limited to ten years. MORTGAGE redemption in one year. MECH. LIEN redemption, one year before sale. TAX redemption, three years. JUDGMENT redemption, one year; lien limited to ten years.

§ 313. **Pennsylvania**—ACKNOWLEDGMENTS—All deeds to be acknowledged or proved. IN THE STATE, before one of the judges of the Supreme Court or one of the justices of the Court of Common Pleas of the county where the land lies. Acknowledgments for lands in the State made before the president of the Court of Common Pleas for the County of Philadelphia or the president of the Court of Common Pleas in any other county of this State shall be as effectual in law as if made before one of the judges of the Supreme Court. If before any assistant or associate judge of the Courts of Common Pleas it shall be equally effectual. The mayor and recorder of the City of Philadelphia, the master of the rolls and the justices of the peace of the State can take in their county. Aldermen of the City of Philadelphia can take, records of deeds in

their county or city, under their hand and official seal. IN OTHER STATES, United States commissioners, by officers authorized by the State's laws. FOREIGN commissioners in chancery certified under their seals. Certificates and seals of officers outside this State are not required to be proved, accepted as *prima facie* evidence. The certificate of a justice of the peace or alderman must be verified by the clerk or prothonotary of a court of record, under court seal. MILITARY—A major, or higher officer, can take acknowledgments in the army. Corporations may employ its attorney to acknowledge its documents—See forms. Army and Navy and Government officers in Porto Rico, Cuba, Philippine Islands, can take. PERSONALLY KNOWN or proved to officer is required. WITNESSES—One required to a deed; two to wills. PRIVATE SEALS—Scroll required. WOMEN—Married, to convey property with husband joining in the deed. Separate examination of married women not required. DOWER AND CURTESY—Exist; one-third for life if there are children; one-half if there are no children. POWER OF ATTORNEY—Married women can release their own estates by power of attorney, without husband joining, when duly acknowledged and recorded. ACTION for recovery of lands limited to twenty-one years, or ten years after a disability; fifteen years for existing rights; seven years quiet possession; forty years bars the world. HOMESTEAD exemption, \$500. JUDGMENT liens limited to five years. MECHANIC liens to be filed in six months; limit of lien, five years. MORTGAGE redemption, three months; may be extended one year on filing notice of agreement. TAX redemption limited to two years.

§ 314. **Philippine Islands**—ACKNOWLEDGMENTS taken by notaries. HOMESTEAD exemptions, 150 pesos. JUDGMENT and executions limited to five years. WILLS—Any one of sound mind of legal age can make a will. Must be in writing, signed by the testator or by some one in his presence and at his request and direction, attested and subscribed in his presence by three credible witnesses.

§ 315. **Porto Rico**—Property is divided into movable (personal) and immovable (realty). Ownership is acquired by retention, and transmitted by gift, by testate or intestate succession and in consequence of certain contracts by tradition. Things are acquired by retention, which can be appropriated by reason of their nature, viz: those having no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property. Succession is the transmission of the rights and obligations of a deceased person to his heirs. May be disposed of by will. All persons over 14 years may dispose by will if of sound mind. Ordinary wills may be holographic, open or closed. Military and marine wills are special. Acknowledgments—Notaries and commissioners can take. WITNESSES—Two to a will. WILLS—Notary and witness must know the testator. Persons blind, or unable to read, cannot make a will. Deaf and dumb who can write may execute a closed will. It must be written entirely and signed by the testator, stating place, day and month. The notary certifying same, then delivers it to the testator, retaining a certified copy in his private protocol. If testator leaves his with the notary, latter to give a receipt for same,

and make a memorandum. It must be presented in court within ten days of the testator's death. A closed will must have five witnesses, three of whom must be able to sign. The testator must state what it is, who wrote it and what changes and interlineations have been made. Statement must be made in the presence of the witnesses. All of which the notary must note on the back of the envelope, with a note of the number of seals on outside and that every legal requirement has been complied with, that the testator is known to him, that he is capable of making same. The memorandum shall be read to the testator signed by the testator and the witnesses. Notary must authenticate with his name and seal. A holographic will is written by the testator in his own hand and signed by him and dated. The party receiving it must within ten days of the death of the testator present same to the District court. Otherwise he is liable. The notary and witnesses must be present when proven in court. An open will is one in which the testator expresses his desire in the presence of the persons who must authenticate it; must be executed by a notary in presence of three witnesses; must be read aloud to the testator; signed by all; one of the witnesses can sign for the testator, the notary stating same; must be read thrice if party is blind. A closed will is one SEALED and delivered by the testator, in an envelope, sealed with wax, to the parties whom he wishes to authenticate it, declaring it to be his last will and testament. No one can be a witness to a will who is under the age of 14, a non-resident of the place of its execution, blind, deaf or dumb, unfamiliar with the language of the testator; criminals or those convicted for forgery, perjury; clerks, amanuenses, servants, relatives within the fourth degree of consanguinity or second of affinity of the notary who authenticates the will; neither heirs, legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity. The notary and two witnesses must know the testator or have him identified by two witnesses. They must be sure the testator has legal capacity. The burden of proof falls on them when the will is proved. It must be written in English and Spanish. Wills may be executed without a notary, in the presence of three witnesses over 16 years of age, but must be reduced to writing by a notary within two months. If the testator die before, application must be made, within three months after, to the proper court to have same reduced to writing. All interlineations in the wills must be fully explained in the document.

§ 316. **Rhode Island**—ACKNOWLEDGMENTS—Within the State, to be before any State senator, judge, justice of the peace, mayor, notary public, town clerk, or recorder of deeds. Other States, before any judge, or justice of a court of record or other court, justice of the peace, mayor or notary of the State, District of Columbia, or territory, in which it is made, or before a commissioner of deeds appointed by the Governor of this State, provided, that if proved in the manner prescribed by the laws of the State, etc., where executed, it shall be deemed to be legally executed, and shall have the same effect as if executed as above described. Acknowledgments taken without the

United States may be before any United States ambassador, minister, charge d' affaires, consul-general, vice-consul-general, consul, vice-consul, consular agent, or commercial agent, or before any commissioner appointed by the Governor of this State in the country where the acknowledgment is taken, provided that such acknowledgment may also be made within or without the limits of this State by any person actually engaged in the military or naval service of the United States, before any colonel, lieutenant-colonel, or major in the army, or any officer in the navy not below the grade and rank of lieutenant-commander. PERSONALLY KNOWN and personally to appear (or proved) to officer, is required. WITNESSES—None to deeds, two to wills. PRIVATE SEALS—Abolished. WOMEN—Married, may convey same as if single. Separate examination, no; to be free act and deed. May convey directly to or receive from her husband. DOWER AND CURTESY—One-third in fee simple, one-half if no issue, and are conveyed by jointure. POWER OF ATTORNEY may be made by acknowledging and signing same as by deed. MORTGAGE redemption, two months. TAX redemption, one year. MECHANIC'S Lien limited to four months. JUDGMENTS issue at once.

§ 317. **South Carolina**—ACKNOWLEDGMENTS—A deed to be entitled to record in this State must be proved by the affidavit of a subscribing witness before an officer in this State competent to administer an oath, a commissioner appointed by dedimus of the County Common Pleas Court clerk, a commissioner of deeds of this State, clerk of a court of record under his official seal, a notary under his official seal accompanied by the certificate of his official character, by a clerk of a court of record of the county where affidavit is made, or before a consul, vice-consul or consular agent of the United States. If the witness be dead or not accessible the instrument may be proved on the handwriting of the parties. WITNESSES—Two required, in the presence of whom the release is to be made and signed and endorsed by County Auditor, three to a will. PRIVATE SEALS—Scroll required. WOMEN—Any married woman may convey. CURTESY—Abolished. HOMESTEAD—\$1,000 allowed; conveyed by jointure. POWER OF ATTORNEY—Married women may so convey their separate estates. DOWER—One-third. Wife may renounce by separate instrument, husband to join in the deed. Separate examination required that she freely and voluntarily without compulsion conveys. ACTION to recover land limited to ten years. Must have had possession in forty years or ancestors. ESTATES TAIL limited to life in being. DEED to be recorded in forty days. JUDGMENT Lien limited to twenty years. MORTGAGE redemption in one year. MECHANIC'S Lien redemption one year. TAX redemption six months, quieted in ten years.

§ 318. **South Dakota**—ACKNOWLEDGMENTS taken—in the State, before a justice or clerk of the Supreme Court or notary anywhere, before a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, United States Circuit or District Court commissioner, county clerk, county auditor, within their jurisdiction. Out of the State, before a justice, judge or clerk of any court of record

of the United States, a justice, judge or clerk of any court of record of any State, a notary, or any officer so authorized by the State where the same is being taken, a commissioner of deeds appointed by the Governor of this State. Can be taken without the United States, before a minister, commissioner, or charge d' affaires of the United States, resident or accredited to the country where same is taken, a consul, vice-consul, consular agent of United States therein resident, a judge, clerk, or commissioner of a court of record, a notary public, their deputy if they are authorized to have such. **ACKNOWLEDGMENT** of party or corporation must be made to the instrument before it can be recorded. **PARTY MUST BE PERSONALLY KNOWN** to the officer, or identity proved on oath or affirmation of a credible witness. Officer must affix his name, office and seal to the instrument. **WITNESSES**—Two to a will; none required to deeds. **PRIVATE SEALS**—Abolished. **WOMEN**—Married, convey as if single. Age to convey, 18. Separate examination not required. **DOWER AND CURTESY**—Abolished. **HOMESTEAD**—Exemption, 160 acres or one town lot. Conveyance jointly. **POWER OF ATTORNEY** to convey lands acknowledged and recorded, same as by deed, is valid. **ACTION** to recover land limited to twenty years. **JUDGMENT** redemption one year; lien limited to ten years. **MECHANIC'S Lien** redemption one year. **MORTGAGE** redemption one year. **TAX** redemption two years.

§ 319. **Tennessee**—**ACKNOWLEDGMENTS**—If within the State, before the county clerk or his legal deputy, or a notary public. In another State, before a commissioner for this State, a notary public. In a foreign country, before a commissioner for this State, a notary public, a United States minister, consul, or ambassador. If made before a notary, commissioner, consul, minister or ambassador he shall certify under his seal of office. If made before a judge, he shall make the certificate and his court clerk shall certify it under his seal of office; if there be no seal, then under his private seal, stating the official character of the judge, or it may be certified by the Governor. If made before a court of record a copy of the entry on the record shall be certified by the clerk under his seal of office; if there be no seal, then under his private seal and the judge, chief justice or presiding magistrate shall certify to the character of the clerk. If before a clerk of a court of record of another State, and certified by him under his seal of office, the judge, chief justice or presiding magistrate of the court shall certify to the official character of the clerk. **PERSONALLY KNOWN** or identified to the officer and personal appearance required. Unless wife is sick then commission can take. **WITNESSES**—None, if acknowledged; otherwise, two; two to will. **PRIVATE SEALS**—Abolished. **WOMEN**—Age to convey, 21. Can convey her separate estate without husband's consent. Separate examination of, required. **DOWER AND CURTESY**—One-third for life. **HOMESTEAD**—Exemption \$1,000; conveyed by jointure. **POWER OF ATTORNEY** can convey by same as by deed. **ACTION** to recover land limited to twenty years. **ESTATES** Tail abolished to fee simple. **JUDGMENT** redemption two years; lien limited to ten years. **MECHANIC'S LIEN**

redemption two years. MORTGAGE redemption, two years; lien limited to ten years. TAX redemption, two years; lien limited to six years. TRUST deeds used as mortgages.

§ 320. **Texas**—CONVEYANCES must be in writing, subscribed to and delivered by the party or his authorized agent. ACKNOWLEDGMENTS or proofs of instruments in writing may be taken in this State, before a clerk of the District Court, a judge or clerk of the County Court, a notary public. In any other State, before a clerk of a court of record having a seal, a commissioner appointed by the Governor of this State, a notary public. In foreign countries, before a minister, commissioner, or charge d' affaires, of the United States resident, a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident, a notary public. Grantor must appear in person before the officer and state that he executed the same for the consideration and purposes therein stated. The officer shall make a certificate, sign and seal it with his seal of office. MUST BE KNOWN TO THE OFFICER, or their identity sufficiently proven on the oath or affirmation of a credible witness, which shall be noted on his certificate. WITNESSES—Two required to deeds unless acknowledged before an officer and certified to by him, two to a will, three to nuncupative will. PRIVATE SEALS—Abolished, except of corporations. WOMEN—Age to convey, 21, or marriage, husband to join in conveying her separate estate. MARRIED WOMAN shall have the instrument shown and explained to her by the officer, be examined separate and apart from her husband, and acknowledge the same to be her act and deed, willingly signed, that she does not wish to retract it. DOWER—Is none; community system. CURTESY—Is none; have community system. HOMESTEAD—Exemption, 200 acres; wife to join in its conveyance, signing and acknowledging separately. POWER OF ATTORNEY—To be recorded. A WILL conveying land in this State, probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court where probated, with the seal of the court attached, and a certificate of the judge or magistrate of such court, that the attestation is in due form, may be filed and recorded in the county register of deeds where the real estate is situated, as deeds and conveyances are, without further proof or authentication, provided the same may be contested any time within four years, as the original will might be. ACTION to recover land limited to ten years. JUDGMENT redemption, one year; lien limited to ten years. MECHANIC'S Lien redemption one year; contractor must file claim in four months, laborers and others in thirty days; sale in twelve months. MORTGAGE redemption, thirty days. TAX redemption two years.

§ 321. **Utah**—CONVEYANCES are by deed, signed by the grantor, if of age, or his lawful agent. ACKNOWLEDGMENTS in the State must be taken before some judge or clerk of a court having a seal, a notary public, or county recorder, where the conveyance is executed or to be recorded. If in any other State or territory, by a judge or clerk of

a court having a seal, or by a notary public or commissioner appointed by the Governor of this State. If in a foreign country, by some judge or clerk of a court of the country having a seal, or any notary, United States minister, commissioner or consul resident. The officer's authorized deputy may take. The judge or clerk of court shall attach the court seal. The officer who has a seal of office shall attach his seal. **PERSONALLY KNOWN**—The certificate to state the fact of acknowledgment, that the person making it was personally known to the officer, or was proved such by oath or affirmation of a credible witness whose name shall be inserted in the certificate. **PRIVATE SEALS** are abolished. **WITNESSES**—None to deeds, two to wills. **WOMEN**—Age to convey, 18. Married women may convey their separate property when acknowledged or proved and certified to, without further proof. Separate examination of wife not required. **DOWER AND CURTESY**—Wife has one-third absolute in his lands after marriage. **HOME-STEAD**—Exemption \$2,000, and \$250 each new child and all personal property; conveyed by jointure. **POWER OF ATTORNEY** to convey property must be acknowledged or proved, certified and recorded. The revocation must also be recorded. A conveyance legally acknowledged or proved and certified may be read in evidence without further proof. **ACTION** to recover lands limited to seven years. **HUSBAND AND WIFE** can contract with each other as if single. **JUDGMENT** lien limited to eight years. **MECHANIC'S LIEN**—Claim to be filed in thirty days; action within one year thereafter. **MORTGAGE** redemption, six months. **TAX** redemption, four years.

§ 322. **Vermont**—**ACKNOWLEDGMENTS**—Who may take in the State—Town clerks, justices of the peace, notary public, master in chancery, county clerk, judge or register of probate. The notary's acknowledgment shall be valid without his official seal being affixed to his signature. Out of the State—If certified according to the laws of the State, province or kingdom where taken, shall be valid proof of the same, may be taken and acknowledged before a justice of the peace, magistrate or notary public within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the Governor of this State, or before a minister, charge d' affaires, consul or vice-consul of the United States in a foreign country. **PERSONALLY** known, or proved to the officer, and personal appearance, required. **WITNESSES**—Three to a will; two to a deed. **PRIVATE SEALS**—Scroll required. **WOMEN**—Age to convey, 18. Husband must join in conveying her estate. **SEPARATE EXAMINATION** of wife is not required. **DOWER AND CURTESY**—Exist, but may elect otherwise. **HOMESTEAD**—\$500; conveyed by jointure. **POWER OF ATTORNEY**—Can convey by; must be signed, sealed, witnessed, acknowledged, recorded. A grantor or lessor refusing to acknowledge his deed or lease may be cited before a justice of the peace with right of appeal. The deed or lease may be recorded in the meantime and be effectual for sixty days, and if the proceedings for proving are still pending the record may stand until six days after the termination of the suit. Vendor shall within six months after request record his title, or liable

to be cited before a justice and may be committed for refusal and liable in an action at law for damages. Where the grantor or lessor dies or leaves the State without acknowledging his deed the execution may be proved by the testimony of a subscribing witness before a judge of the Supreme or County Court, and if all the witnesses are dead or out of the State, it may be proved before such courts on the handwriting of the grantor and of a subscribing witness, or adducing other evidence to the satisfaction of the court; such evidence entered on such deed or annexed thereto shall be equivalent to the grantor's or lessor's acknowledgment. ACTION to recover land limited to fifteen years. MECHANIC'S LIEN, three months. MORTGAGE redemption one year, unless the value of property is less than incumbrance, then in discretion of court. TAX SALE—Redemption, one year. JUDGMENTS do not create a lien. The lien is created by the attachment which holds for thirty days after judgment on personal property and five months on real property.

§ 323. Virginia—ACKNOWLEDGMENTS—May be taken by a clerk of the court, a justice, commissioner in chancery of a court of record, or a notary within the United States, or a commissioner appointed by the Governor within the United States, clerk of any court out of this State within the United States, or under official seal; any minister plenipotentiary, charge d' affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or the proper officer of any court of such officer, the mayor or other chief magistrate of any city, town, or corporation therein. Notary must state when his term expires ("My term expires—"). Notaries public or other officers who are stockholders in a corporation can take its acknowledgments, provided they are not otherwise interested. Acknowledgments taken outside the State by a notary must be certified as to his official character by any court of record, the mayor, or chief magistrate of any county, city, town or borough, or under the great seal of the State, kingdom, etc., where the notary resides. PERSONALLY KNOWN, or identified to officer, is required. WITNESSES—Two to a deed or will. PRIVATE SEAL—Scroll required. WOMEN—Can convey separate estate. Separate examination of wife not required. DOWER AND CURTESY—One-third life, and are conveyed by jointure. HOMESTEAD—Exemption, \$2,000; conveyed by jointure. POWER OF ATTORNEY—May convey by power of attorney, husband to join wife if outside the State, same as by deed, acknowledged, signed in presence of two witnesses, and recorded. ACTION to recover land limited to fifteen years. ESTATES tail limited to life in being. JUDGMENT Liens limited to twenty years. MECHANIC'S LIENS—Limitation, six months. TAX redemption and limitation five years.

§ 324. Washington—ACKNOWLEDGMENTS—In this State—May be taken before a judge of the Supreme Court, the clerk, deputy clerk, judge of the Superior Court, clerk or deputy thereof, judge of the Probate Court, a justice of the peace, county auditor or deputy, a notary public. In any other State—Same form as prescribed in this

State, and before any one there authorized, or any commissioner appointed by the Governor of this State for such purpose. Unless it be taken before a commissioner or by the clerk of the court of record or by a notary public or other officer having a seal of office, it shall have attached a certificate of the clerk of the court of record, under the seal of said court of said county or district, or a certificate of any other proper certifying officer of the county or district that the person was such officer, that he is authorized and that he believes the signature genuine. In foreign countries—Before any minister plenipotentiary, secretary of legation, charge d' affaires, consul-general, consul, vice-consul or commercial agent of the United States, or before the proper officer of any court of the country, or a mayor or chief magistrate of any city, town or municipal corporation or a notary. The person taking shall certify by writing on, or annexing to, the instrument, under his official seal, in substance that the instrument was acknowledged by the persons whose names are signed thereto as grantors before him as such officer with the date of such. Such certificate shall be prima facie evidence of the facts stated. Same shall be admitted to record in this State. Certified copies by the county auditor shall be received in evidence. INDIAN conveyances shall be by deed, acknowledged before a judge of a court of record. The judge shall explain to the grantor the contents and the effect and so certify in the acknowledgment, shall duly examine and approve same before record. PERSONALLY KNOWN or identified to the officer and personal appearance required. WITNESSES—Two required to a deed or will. PRIVATE SEALS—Abolished. WOMEN—Age to convey, when married. Can convey their own separate property same as the husband. Separate examination not required. DOWER AND CURTESY—Abolished. Community system prevails. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—Conveyance by, to be acknowledged, signed and recorded, same as a deed. Either husband or wife can so convey their separate property. A document bearing a seal, sent by telegraph, the same may be expressed by the letters L. S. or by the word "Seal," and if it bears a stamp, it shall be sufficient to express "Stamp." ACTION to recover land limited to ten years. JUDGMENT redemption one year, lien limited to seven years. MECHANIC'S LIEN redemption eight months, lien seven years. MORTGAGE redemption one year, lien seven years. TAX redemption three to four years, lien seven years.

§ 325. West Virginia—DEEDS, CONTRACTS, powers of attorney or other writings to be admitted to record, shall be acknowledged by the grantor or proved by two witnesses; acknowledgments may be taken, IN THE UNITED STATES—Before the county clerk, or upon the certificate of acknowledgment of a justice, notary, recorder, prothonotary or clerk of any court within the United States, or a commissioner appointed by the Governor of this State, written or annexed to the same. In a foreign country—Before and under the hand and official seal of any minister plenipotentiary, charge d' affaires, consul-general, consul, deputy consul, vice-consul, consular agent, vice-consular agent,

commercial agent or vice-commercial agent, appointed by the government of the United States to such country, or of any proper officer of any court of such country, the mayor, or chief magistrate of any city, town or corporation therein. **PERSONALLY KNOWN**—The grantor's writing to be acknowledged or proved by two witnesses before a notary; same stated in the certificate of acknowledgment. **WITNESSES**—None to deed if acknowledged; two if not; two to a will. **PRIVATE SEALS**—Scroll required. **WOMEN**—Age to convey, 21; married convey as if single. Separate examination not required. **DOWER AND CURTESY**—One-third. Conveyance by jointure of husband and wife. **HOMESTEAD**—Exemption \$1,000. **POWER OF ATTORNEY**—Convey by, same as by deed. **ACTION** to recover land limited to ten years. **ESTATES** tail limited to life in being. **JUDGMENT** limitation ten years. **MECHANIC'S Lien** record in thirty-five days. **TAX** redemption one year. **LIENS** all limited to ten years for closing

§ 326. **Wisconsin**—**ACKNOWLEDGMENTS**—Conveyance of land is by deed, signed, sealed and acknowledged. Who can take, in the State—Judges of courts of record, clerk of, court commissioner, county clerk, register of deeds, notary, justice of the peace, commissioners of the United States federal and district courts in the State, police justices. Outside this State—Any officer so authorized by the laws of that State. Signed and sealed. Certificate of Secretary of State or clerk of the county court of record, under their official seals, to be attached, stating that the officer taking was at the time so authorized. May be executed according to the laws of the State and acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer so authorized by the State, or before a commissioner appointed by the Governor of this State. In a military post, by its commanding officer. Acknowledgments, unless taken by a commissioner, a clerk of a court of record, with its seal attached, a notary with his seal attached, or the commanding officer of a military post, shall have attached the certificate of the clerk, or other proper certifying officer of a court of record of the county or district, under his seal of office, stating that the person subscribing to the certificate of acknowledgment was such officer at the date thereof, that he believes the signature genuine and acknowledged according to the laws of the State. The commissioner, clerk of court, notary or commanding officer, shall state if it is executed according to the laws of the State. Outside the United States—Any officer authorized by the laws of this State, any United States minister resident, charge d' affaires, commissioner or consul, vice-consul or consular agent appointed, under their hand and seal of office. Notaries' certificate to state that it was acknowledged according to the laws of the country. **PERSONALLY KNOWN** to and personal appearance before the officer required or proved. **WITNESSES**—Two to a deed or will. **PRIVATE SEALS**—The word "Seal" or initials "L. S." is sufficient. **MARRIED WOMAN**, of full age (18), may convey her lands jointly or separately from her husband, same as if she were unmarried. No separate examination necessary. Insane wife's dower

released upon petition of husband to the court, within twenty to sixty days. DOWER—One-third for life; conveyed by wife as if unmarried, jointly or separately from husband. CURTESY—One-third for life. HOMESTEAD—Exemption \$5,000. Conveyance wife must join. POWER OF ATTORNEY—So conveyed when acknowledged, signed and recorded same as a deed. ACTION to recover land limited to twenty years. Deeds recorded pass title. ESTATES tail limited to lives in being. JUDGMENT redemption one year, lien limited to twenty years. MECHANIC'S LIEN redemption six months for filing of claim, one year after for suit. MORTGAGE redemption one year. TAX redemption three years.

§ 327. Wyoming—CONVEYANCE of land may be by deed signed by the grantor if of age, or by his agent or lawful attorney, acknowledged or proved and recorded. ACKNOWLEDGMENTS—Taken in the State—Before any judge, clerk of a court of record, or a court commissioner appointed under or by authority of the laws of the United States, county clerk, justice of the peace, or notary, the officer shall certify with the date under his hand and seal of office if he have one. Outside the State—By any officer authorized by the State or country under his official seal, if he have none his certificate must be authenticated by the clerk of a court of record or a county clerk having a seal, certifying that he is authorized to take, that his signature is genuine. Notaries public and justices of the peace and commissioner of deeds for Wyoming shall add the date their commission expires. IN FOREIGN COUNTRIES, before—A consul-general, consul, or vice-consul of the United States, same to certify over their hand and official seal. PERSONALLY KNOWN to officer required. WITNESSES—One to a deed, two to a will. PRIVATE SEALS—Abolished, except those of corporations. WOMEN—Age to convey, 21 years. Can convey separate estate. Her separate examination required, to sign and acknowledge, freely and voluntarily. She shall be fully apprised of the contents and her rights and the effect of her signing. DOWER AND CURTESY—Abolished. HOMESTEAD—Exemption \$1,500. Wife to join in releasing it, and apprised of her rights. POWER OF ATTORNEY—Can so convey; same manner as by deed. ACTION to recover land limited to ten years. JUDGMENT redemption six months, lien limited to five years. MECHANIC'S LIENS—Contractor files in four months, others in ninety days; limit of lien, six months. MORTGAGE redemption six months. TAX redemption three years.

§ 328. Canada—ACKNOWLEDGMENTS—Taken in the province—before register or deputy, magistrate, justice of the peace, judge or register of a court having a seal, or notary. Other British provinces—Judge of a court, clerk or register having a seal, notary, magistrate having a seal, any person so commissioned by the Lieutenant-Governor. Outside the British dominions—British ambassador, charge d' affaires, minister, consul, consular agent resident, judge of a court having a seal, a notary, certified as such by a British ambassador, charge d' affaires, minister, consul or consular agent, or the Governor of the State, etc. Describe property clearly. WITNESSES—One to a deed, two to a will. SEALS—Scroll seal to a deed.

## CHAPTER IV.

### DEPOSITIONS.

§ 329. A deposition is testimony taken down in writing, under oath or affirmation, upon reasonable notice to the adverse party, before a judicial officer, in answer to interrogatories and cross-interrogatories, and usually subscribed by the witness, unless both parties agree otherwise.

It is the testimony of a witness reduced to writing, in due form of law, by virtue of a commission or other authority of a competent tribunal, or according to the provisions of some statute law, to be used on the trial of some question of fact in a court of justice.<sup>1</sup>

It is written declaration under oath, made upon notice to the adverse party.

Usual manner of taking: The party desiring the testimony makes affidavit to the court where the suit is in progress, or is to be tried, stating the cause, the name and residence of the witnesses whose testimony is desired, and the names of the adverse parties, or their attorney, and their place of abode. Also a list of interrogations to be put to the witness. The statement is also made as to why the witness cannot be present at the trial, which is usually age, infirmity, sickness, about leaving the county or State, resident of another county or State, etc. If the court or judge to whom the application is made is satisfied that the deposition is necessary, a commission to take issues under his hand and the seal of the court by the court clerk. Reasonable notice (usually determined by the court, but sometimes by statute), is given to the adverse party, of the time and place of the taking, name or names of the witnesses, or their attorney of record, and their residences if known. A list of interrogations to be put, which list may be added to by the adverse party or his attorney in the nature of cross-interrogatories. On the return of which the court issues the commission enclosing same, with

<sup>1</sup> Bouvier.

full instructions and a list of the interrogatories and cross-interrogatories, if any, sending same to the commissioner, selected either by the parties themselves or by the court.

Manner of taking: At the appointed day, place and hour, the commissioner calls the court to order, swears the witness to tell the truth, the whole truth, and nothing but the truth. The prepared interrogatories are then answered by the witness, writing same under each question, in the presence of the commissioner, or by some one appointed by him in his presence. The statute regulates the presence of the parties to the case, either in person or by attorney. Usually where the testimony is taken by written interrogatories, the parties or their attorneys are absent. After the deposition is taken it is read to or by the witness, errors corrected, and then signed by him. The commissioner then adds his certificate, stating in it that the party deposing was duly sworn by him before taking, that the interrogatories were answered and subscribed to in his presence, adding who were present, either attorneys or parties in the case. Some states permit it being taken in shorthand and afterwards typewritten. Signed by the commissioner.

The deposition and all papers connected with the taking are then enclosed in an envelope, sealed, the title of the case and the commissioner's name endorsed on the back over the seal, directed to the court issuing the commission, or if the parties have so agreed to the party who instituted the taking. Otherwise they are mailed or delivered in person to the clerk of the court, who notes the time of their receipt and party delivering, on the envelope, and places the same on file for use when called for by the court, or the parties.

The same deposition is often allowed to be used in other cases of a similar nature between the parties, the papers always remaining on file with the clerk or court in the meantime.

Where a commissioner, in describing the commission, mis-describes the name of the clerk who issued it, it in no way detracts from such authority.<sup>2</sup>

When the caption of the deposition properly gives the names of the parties a subsequent error in the name is not a fatal error.<sup>3</sup>

<sup>2</sup> Kendall v. Limberg, 69 Ill. 355.

<sup>3</sup> Id.

The court in its discretion may allow to be read copies instead of original papers annexed by the deponent to his deposition.<sup>5</sup>

§ 330. **Deposition de bene esse** is one taken conditionally; when a witness is sick, unable to attend the trial, or likely to die. In such cases their testimony is taken conditionally, that they will attend the trial and give oral testimony if possible.<sup>6</sup>

§ 331. **Deposition dedimus potestatem.**—A writ issued by a court, judge or justice commissioning private persons to act as judge, examine a witness or such act. It means “we have given power.”<sup>7</sup>

§ 332. **A witness** is one who testifies to what he knows. One who testifies under oath to something which he knows at first hand.<sup>8</sup>

The evidence of an interested witness must be objected to either when the deposition was taken, if the other party was present, or on motion before trial.<sup>9</sup>

Where the party appears before the officer taking the depositions and cross-examines the witnesses, when it was stipulated that the witnesses should be examined before that officer; all formalities touching the dedimus are waived.<sup>10</sup>

The notice to take the depositions of certain named witnesses “and others” is sufficient to authorize the taking of the deposition of an additional witness not specifically named in the notice.

If the depositions show on their face that the testimony of the witnesses, who were non-residents, was material, and therefore necessary, it is not to the extent of invalidating the depositions, that the fact should have been made to appear on the face of the notice.<sup>11</sup>

Where a person is examined before a court or officer, and his deposition is reduced to writing and signed by the affiant, such deposition is the best evidence of the witness’ statement;

<sup>5</sup> L’Herbette v. Pittsfield Nat. Bk., 162 Mass. 137.

<sup>6</sup> 16 Wend. 603.

<sup>7</sup> 2 Blackstone 351.

<sup>8</sup> Bouvier.

<sup>9</sup> Lockwood v. Mills, 39 Ill. 602.

<sup>10</sup> Rockford Wholesale Grocery Co. v. Stevenson, 65 Ill. App. 609.

<sup>11</sup> Independent Dryer Co. v. Livermore Foundry Co., 60 Ill. App. 390.

and no statement made by him and not contained therein is part thereof.<sup>12</sup>

If the certificate of an officer, taking depositions in chancery, states that the witnesses were sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions are signed, it is sufficient, although the certificate does not state when the oath was taken, nor that the depositions were signed by the deponents.<sup>13</sup>

§ 333. **Interrogatories.**—A motion to suppress a deposition taken upon written interrogatories should be sustained, where subsequent to the giving of notice of the intention to take the same the opposite party gave notice of his election to take it upon oral interrogatories.<sup>14</sup>

Under the Florida Statutes the interrogations put to the adverse party is, like a bill of discovery in equity, in aid of an action at law, and limited to the support of the case or defense of the party propounding and cannot extend to the whole case.<sup>15</sup>

An affidavit of the materiality of the testimony is unnecessary where a general order has been granted by the judge, the defendant propounds, cross interrogatories, and the defendant's generalities are vague.<sup>16</sup>

§ 334. **A subpoena.**—Subpoena under a penalty. A writ commanding the attendance or appearance of a witness or party in court, or before a judicial officer, under a penalty in case of disobedience.<sup>17</sup>

A superior court cannot punish a person for contempt in refusing to answer a subpoena issued by a notary public, before whom he was to appear and make deposition upon notice.<sup>18</sup>

§ 335. **Refusal to appear.**—The statutes of Illinois empower notaries and other officers authorized to take depositions in any cause pending in courts of law or equity in the State, or by virtue of a commission issued out of any court of record

<sup>12</sup> Bradner's Evidence, 2d ed. 255.

<sup>16</sup> Bradford v. Cooper, 1 La. Ann.

<sup>13</sup> Ballance v. Underhill, 3 Scam. 453.

325.

<sup>17</sup> Burrill Law Dicty.

<sup>14</sup> Lewis v. Fish, 40 Ill. App. 372.

<sup>18</sup> Lezinsky v. Superior Ct. 72

<sup>15</sup> Jacksonville T. & K. W. R. Co. v. Penn. Land, T. & Mfg. Co., 27 Fla. 1.

Cal. 510.

in any other State, Territory or country, to subpoena and compel the attendance of witnesses. On the refusal of witness to comply, the officer shall report in writing the facts to the Circuit Court of such county, from which attachment shall issue against such witness, returnable forthwith before such court. If it appear to the court the refusal was without excuse, fine and imprisonment shall be imposed, or fine or imprisonment, as in cases of contempt.<sup>19</sup>

The Supreme Court of Illinois decided that when a person refuses to appear before a notary and depose in obedience to a subpoena it may be truly said he acted in contempt of the notary. The party owed, by reason of the subpoena, no duty to the Circuit Court or its judge; his failure to obey placed him in the position of all willful violators of the law. That which is not an obstruction to the exercise of the functions of the court cannot be punishable as a contempt summarily and without trial by jury. The statute authorizing a circuit judge to proceed without a jury is unconstitutional, void and not law. Respect to courts cannot be compelled.<sup>20</sup>

In Nebraska it was held: A notary public in the exercise of judicial functions given by law is a court and has power to commit for contempt under the constitution.<sup>21</sup>

The United States Supreme Court, in a later decision, decided that one of the functions of a court is to compel a party to perform a duty which the law requires at his hands. The defendant is no more entitled to a jury than is a defendant in a proceeding by mandamus to compel him, as an officer, to perform a ministerial duty. In a judicial sense there is no such thing as contempt of a subordinate administrative body. No question of contempt can arise until the issue of law is determined adversely to the defendant and he refuses to obey the final order of court. In matters of contempt a jury is not required by "due process of law." From the very nature of their institution, and that their lawful judgments may be respected and enforced, courts possess power to punish for contempt. The power is recognized and enforced by statute authorizing them to punish contempts of their authority when manifested by disobedience of their lawful writs, pro-

<sup>19</sup> Starr & Curtis' Anno. Ill. Statutes 1896, p. 1857. Puterbaugh v. Smith, 131 Ill. 199.

<sup>21</sup> Dogge v. State, 21 Neb. 272.

<sup>20</sup> Storey v. People, 79 Ill. 45;

cesses, order, rules, decrees or commands. A judgment of the court determining the issue will be a legitimate exertion of judicial power extended by the constitution.<sup>22</sup>

A person can be regarded as in contempt for failure to obey an order of court only where the failure is intentional.<sup>23</sup>

He cannot be adjudged in contempt and deprived of his property and imprisoned without notice and without an appearance; there is no jurisdiction, and an order assuming to fine, and for non-payment imprison, under such circumstances is void.<sup>24</sup>

The purpose of the law is to secure a fearless and impartial administration of justice and to guard against abuse of legal authority. Inferior courts acting in excess of jurisdiction are liable in damages to the party injured. The act is *coram non judice* and void; and the attempt to enforce sentence or conviction is a trespass. It is only when in the proper exercise of judicial functions that the power to sentence for contempt can be exercised.<sup>25</sup>

**§ 336. Taking for U. S. Courts.**—Depositions may be taken before a notary public in any civil cause depending in a United States, District or Circuit Court, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. Any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify in court.<sup>26</sup>

Every person deposing shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.<sup>27</sup>

In addition to the mode of taking the depositions of wit-

<sup>22</sup> *Interstate Commerce Com. v. Bronson*, 154 U. S. 447.

<sup>23</sup> *Dines v. People*, 39 Ill. App. 505.

<sup>24</sup> *Smith v. Tenney*, 62 Ill. App. 571.

<sup>25</sup> *Piper v. Pearson*, 68 Mass. 120.

<sup>26</sup> U. S. Rev. Stat. 1878, sec. 863.

<sup>27</sup> *Id.* sec. 864.

nesses in causes pending at law or equity in the District and Circuit Courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the State in which the courts are held.<sup>28</sup>

Every deposition taken shall be retained by the magistrate taking it until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court.<sup>29</sup>

§ 337. **Who can take.**—Where the statutes so provide, depositions may be taken before any disinterested person as commissioner. The person may be designated by name or office. It is sufficient evidence of the person's identity when after taking and returning the deposition he certifies that he did it pursuant to the commission.<sup>30</sup>

He is not required to certify anything in respect to his commission. The commission shows an authority to take.<sup>31</sup> No certificate of his official character is required.

The Michigan Statutes empowers any court of record to appoint special commissioners before whom depositions may be taken. It is questionable whether a common order, entered by consent of parties and without the knowledge of the court, can be regarded as an appointment. A notary being an attorney of the Supreme Court may perform the duties of Circuit Court commissioner when that officer is disqualified.<sup>32</sup>

A general order to take depositions when officially signed by the judge, clothes with authority and is sufficient.<sup>33</sup>

Consuls of the United States are not required to be commissioned in order to take depositions.<sup>34</sup> A county judge or court commissioner may take the deposition of witnesses residing within his county.<sup>35</sup> Also a notary public.<sup>36</sup> They

<sup>28</sup> *Id.* Sup. 2, p. 4; 113 U. S. Rep. 713.

<sup>29</sup> U. S. Rev. Stat. 1878, sec. 865.

<sup>30</sup> *Brown v. Luehrs*, 79 Ill. 575.

<sup>31</sup> *Kendall v. Limberg*, 69 Ill. 355.

<sup>32</sup> *Crone v. Angell*, 14 Mich. 340.

<sup>33</sup> *Bradford v. Cooper*, 1 La. Ann. 325.

<sup>34</sup> *Simmons v. Walters*, 55 Wis. 675; 2 Rev. Stat. of U. S. (2d ed.) 1750; *Herman v. Herman*, 4 Wash. C. C. 555.

<sup>35</sup> *Whereatt v. Ellis*, 65 Wis. 639.

<sup>36</sup> *T. W. & W. Ry. Co. v. Baddeley*, 54 Ill. 19.

may be taken before any disinterested person as commissioner. Who may be designated by the name of the office which he holds as well as by his proper name.<sup>37</sup> The party suing out the dedimus is not required to give the name of the commissioner.<sup>38</sup> Consent of court is not necessary.<sup>39</sup>

§ 338. **A notary taking outside of his State.**—A notary public taking depositions in one State, to be used in a suit pending in another, can in no sense be regarded as an instrument or agency of the court wherein such suit is pending. Neither the notary, nor any of the parties appearing before him are answerable to the court for anything said or done while there, the whole matter being outside its jurisdiction. In taking the depositions, the notary performs purely ministerial functions. He can decide no questions nor determine any matter affecting the rights of the parties to the suit, nor is he connected with any court or other tribunal having the power to do so.<sup>40</sup> It is not necessary to attach to his certificate any certificate of a clerk or other certifying officer as to official character.<sup>41</sup> If taken in another State on a day recognized as a legal holiday it is not contrary to statutes.<sup>42</sup>

§ 339. **Notice of deposition.**—The party who gives notice that he will sue out a dedimus to take the testimony upon written interrogatories, after receiving notice that the party to whom the notice was given has elected to take the deposition upon oral interrogatories, should reply with a notice of the time and place where the deposition will be taken, as the party desiring the testimony he should give notice of the time and place.<sup>43</sup>

Under the Louisiana code, notice of the time and place of taking is unnecessary when the defendant crosses the interrogatories.<sup>44</sup>

Ten days' notice must be given before suing out a dedimus.<sup>45</sup>

Under the West Virginia code the publication of notice ex-

<sup>37</sup> Brown v. Luehrs, 79 Ill. 575.

<sup>38</sup> Cole v. Choteau, 18 Ill. 439.

<sup>39</sup> Sprule v. Samuels, 4 Seam. 135;

Doyle v. Wiley, 15 Ill. 576.

<sup>40</sup> Greer v. Young, 120 Ill. 184.

<sup>41</sup> Hayes v. Frey, 54 Wis. 503;  
Sleep v. Heymann, 57 Wis. 495.

<sup>42</sup> Green etc. v. Walker, 73 Wis.

548.

<sup>43</sup> Lewis v. Fish, 40 Ill. App. 372.

<sup>44</sup> Bradford v. Cooper, 1 La. Ann.  
325.

<sup>45</sup> Corgan v. Anderson, 30 Ill. 95.

tends to four consecutive weeks, and is complete on the fourth issue of the paper containing it; it is sufficient if reasonable time elapses between the date of last publication and the taking.<sup>46</sup>

The residences of the witnesses may be stated in the notice and not in the caption of the interrogatories.<sup>47</sup>

§ 340. **How deposition is taken.**—When the examination is to be upon oral interrogatories the party desiring the testimony must begin the interrogation; his questions are in chief, and his adversary has the right to cross-examine. The Illinois Statute does not contemplate the issuing of two commissions, one to take the testimony upon written and the other upon oral interrogatories.<sup>48</sup>

Defects and irregularities in taking and in the examination of witnesses will be disregarded if they are merely formal and do not affect the rights of the parties.<sup>49</sup>

The right to take and use a deposition is a statutory privilege and can be exercised and enforced only in the manner and to the extent provided for by statute.<sup>50</sup>

§ 341. **Compliance with statutes.**—The statute must be substantially complied with.<sup>51</sup> Where the statutes require that the officer's certificate shall show "that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth," it is insufficient to state that the witnesses were sworn "to testify the whole truth of their knowledge touching the matter in controversy."<sup>52</sup>

§ 342. **Caption and form.**—The Illinois Statute has fixed no form for either the caption or certificate. If they are taken and certified in substantial conformity with the requirements of the statute they will not be suppressed on merely technical objections.<sup>53</sup>

§ 343. **Objections.**—General objections at the trial are con-

<sup>46</sup> *Miller v. McMechen*, 33 W. Va. 197.

<sup>47</sup> *Semmens v. Walters*, 55 Wis. 675.

<sup>48</sup> *Lewis v. Fish*, 40 Ill. App. 372.

<sup>49</sup> *Semmens v. Walters*, 55 Wis. 675; *Hewlett v. Wood*, 67 N. Y. 394; *Forrest v. Kissam*, 7 Hill. 463; *Rust v. Eakler*, 41 N. Y. 488.

<sup>50</sup> *Lezinsky v. Superior Court*, 72 Cal. 510.

<sup>51</sup> *Corgan v. Anderson*, 30 Ill. 45.

<sup>52</sup> *West. Union Tel. Co. v. Collins*, 45 Kan. 88.

<sup>53</sup> *Behrensmeyer v. Kreitz*, 135 Ill. 608.

fined to substance.<sup>54</sup> Objections to the form, or incompetency of witnesses, must be made before final hearing.<sup>55</sup> Objection for lack of a stamp must be taken by a motion to suppress, before trial.<sup>56</sup> Objections to interrogatories should be made before trial.<sup>57</sup> An objection that the name of the witness was not in the notice must be taken before trial.<sup>58</sup>

Slight but misleading inaccuracy in name ascribed to the defendant corporation in the deposition is not grounds for excluding the deposition.<sup>59</sup>

A misdescription in interrogatory of promissory note, as bearing twelve per cent. interest instead of ten, is not such variance as will exclude the answer.<sup>60</sup> After a deposition has been read without objection upon one trial it cannot afterwards be objected to on account of any defect existing at the time it was used.<sup>61</sup> Opponent's deposition cannot be suppressed for want of full answers of witnesses to opponent's questions. The objections should come from the party injured.<sup>62</sup>

If there is no appearance on the other side and no cross-interrogatories it is doubtful whether the opposite party can complain that the last interrogatory was not answered. The rule is that it should be answered, as unless it is it is impossible to say that the witness has told the whole truth; but where it is apparent that the witness could not testify further without contradiction to the specific interrogatories the omission is harmless.<sup>63</sup>

§ 344. **Interpreters.**—In Illinois interpreters may be sworn truly to interpret, when necessary.<sup>64</sup> Same is true of most of the States.

§ 345. **Return of the deposition.**—A deposition opened by

<sup>54</sup> Thomas v. Dunaway, 30 Ill. 373.

<sup>59</sup> Merchants Despatch Trans. Co.

<sup>55</sup> Moshier v. Knox College, 32 Ill. 155.

v. Laysor, 89 Ill. 43.

<sup>56</sup> Lockwood v. Mills, 39 Ill. 602.

<sup>60</sup> Stowell v. Moore, 89 Ill. 563.

<sup>57</sup> Missouri Pac. R. Co. v. Ivey,

<sup>61</sup> Brackitt v. Nikirk, 20 Ill. App. 525.

71 Tex. 409; Jacksonville T. & K. W. R. Co. v. Peninsular L. T. & Mfg. Co., 27 Fla. 1; Cin., I., St. L. & C. R. Co. v. Howard, 124 Ind. 280.

<sup>62</sup> Cole v. Choteau, 18 Ill. 439.

<sup>63</sup> Semmens v. Walters, 55 Wis. 675.

<sup>58</sup> Rockford etc. R. Co. v. McKinley, 64 Ill. 338.

<sup>64</sup> Starr & Curtis' Anno. Statutes 1896, p. 1860.

the clerk of the court, in pursuance of an order of the court, and marked "filed," has no reason to be suppressed.<sup>65</sup>

A deposition may be returned to the commissioner for proper signature.<sup>66</sup>

Where a non-suit has been entered conditional to the plaintiff's being ready for trial at a certain subsequent date, the suit must be regarded as pending until its final termination, and depositions taken in the meantime may be read in evidence.<sup>67</sup>

Depositions delivered by the commissioner, who took them to the attorneys, and by them kept until trial and presented in court unsealed, cannot be admitted in evidence.<sup>68</sup>

§ 346. **Fees.**—The same fees will be allowed State officers taking depositions for Federal Courts as are allowed United States commissioners and clerks.<sup>69</sup>

There is no statute in Illinois regulating the fees of commissioners employed here to take depositions in suits pending in other States.<sup>70</sup>

#### STATUTORY REQUIREMENTS.

§ 347. **Alabama**—DEPOSITIONS—Taken by commissioner. (One or more) written interrogatories to be filed with the clerk of the court. NOTICE of ten days to be given adverse party. Commissioner subpoenas witnesses. One hundred dollars' penalty for failure to appear. Commissioner to reduce the answers of witness to writing, having sworn him to speak the truth, the whole truth and nothing but the truth. Commissioner's certificate of the manner, place and personal knowledge of the witness's identity, that the witness has no interest in the result, is presumptive evidence of the fact stated by him. The deposition to be sent to the clerk of the Court, and may be read in evidence unless previously objected to. The testimony of a non-resident witness may be taken conditionally and perpetuated, to be received in evidence.

§ 348. **Alaska**—Depositions may be taken of a witness in an action out of the district any time after service of the summons of defendant, and in a special proceeding any time after a question of fact arises, may be taken in the district under the same circumstances when the

<sup>65</sup> Sullivan v. Eddy, 164 Ill. 391. Co. v. Heilprin & Co., 95 Ill. App.

<sup>66</sup> Semmens v. Walters, 55 Wis. 402.

675; 2 Waits Pr. 707; Keeler v. <sup>69</sup> Jerman v. Stewart Gwynne & Vanderpool, 1 Code R. (U. S.) 289; Co., 12 Fed. Rep. 271.

Creamer v. Jackson, 4 Abb. Pr. 413. <sup>70</sup> Fairchild v. Mich. C. R. Co., 8

<sup>67</sup> Brown v. Foss, 16 Me. 257. App. 591.

<sup>68</sup> Louisville & N. A. A. & C. Ry.

witness is a party to the action, by the adverse party. When the witness resides more than one hundred miles distant, or is about to go more than that away; when infirm; when the testimony is required upon motion, or where the oral examination is not required. May be taken outside the district upon commission issued from the court or without commission before a commissioner appointed by the Governor of the district to take depositions in any State or country. Commissions may issue from a clerk of the court, or by a justice of the peace in a cause in his own court, on the application of either party upon five days' previous notice to the other. Unless parties otherwise agree, commission to be issued to a judge, justice of the peace, notary or clerk of a court. Interrogatories may be issued with the commission as parties or court may agree. Oath of witness to be taken and the deposition to be certified to the court in a sealed envelope, directed to the court clerk or justice who issued the commission, delivered by mail or usual conveyance. In the district the deposition may be taken before the clerk of a court of record or anyone authorized to administer oaths. Three days' notice of time and place to be given adverse party, one day additional for every twenty-five miles, unless the court otherwise decides. Either party may attend and examine the witness. Deposition to be written by the officer taking or by the witness, or by a disinterested person, in the presence and under the direction of the officer. When completed it shall be read to the witness, subscribed to by him, and corrected by him if necessary—corrections and additional statements to be part of the deposition. Officer to append his certificate under his official seal, stating hour, place and date of taking; that witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; that it was read to witness and by him subscribed to. Same to be directed and delivered as before mentioned.

§ 349. **Arizona**—DEPOSITIONS—May be taken; where the witness is a female, is aged, infirm, sick, on official duty, or unable to attend court. Residing out of the Territory or county or fifty miles from trial, has or is about to leave the Territory or county, or when party desires to perpetuate testimony. Either party may apply for commission to take by giving five days' notice to opposite party, with interrogations attached to notice, and name of witness, with residence and place of taking. **WHO CAN TAKE**, a judge or clerk, justice or notary of the county. Either party may attend the examination and interrogate, but cannot in such cases object to questions at the trial unless they did so at the examination. The court judge, etc., may shorten time of notice by notice. **MANNER OF TAKING**—If in the Territory the commission to be addressed to any clerk of the District Court or any notary of the proper county. If without the Territory, in the United States, to any clerk of a court of record having a seal, any notary, or commissioner of deeds for this Territory. If without the United States, to any notary, United States minister, commissioner, or charge d' affaires, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in the country. The officer shall summon wit-

ness, and fine and imprison for failure to appear and testify. The answers to questions shall be written, sworn and subscribed to by witness, certified by the officer, sealed up with other papers, write his name across the seal, indorse names of parties to the suit and the witnesses, direct same to the clerk of the court or justice where the commission issued or, if no commission, where case is pending. May be returned by mail or personally.

§ 350. **Arkansas**—DEPOSITION TAKEN IN THE STATE before any judge or clerk of a court of record, justice of the peace, mayor, notary. OUT OF THE STATE—Before a commissioner appointed by the Governor of this State, judge of court, justice of the peace, mayor, notary, or any person empowered by a commission directed to him by the consent of the parties on order of Court. The clerk of any court of record in the county must certify under his seal that such officer was an acting judge or justice of the peace, duly commissioned at the time. Depositions taken out of the State, sealed and directed as here provided, may be delivered to the party taking the same, his agent or attorney. NOTICE—Reasonable notice to be given adverse party. To subpoena the witnesses, may issue warrant of arrest for contempt, if witness fails to appear. Officer to decide all objections to questions, noting such as are in doubt. Power to prevent insulting or too lengthy questions. Statement of witness must be written in the presence of the officer taking it. Certificate of officer to state the time and place of taking. That the witness was sworn before he gave his testimony, that the testimony was written, read to and subscribed by him in the officer's presence. Must state by whom testimony was written, which of the parties, in person or by agent or attorney, was present. When the depositions is completed it is to be sealed by the officer and directed to the clerk of the Court where suit is pending.

§ 351. **California**—Who may take. IN THE STATE—A judge or any officer authorized to administer oaths, upon serving five days' notice, and one day for every twenty-five miles of travel of witness unless shorter time set by judge, when order must be sent with notice, to the adverse party. OUT OF THIS STATE, by a commission issued from the Court, under Court seal. It may be directed to any person agreed upon by the parties, or, if they do not agree, to any judge, justice of the peace or commissioner selected by the Court or judge issuing it. If commission is issued by a justice of the peace it must have attached to it the certificate, under seal, of the superior court stating that the party issuing it is acting as a justice of the peace. Ten days' notice and one day for every 300 miles from Court to place of taking. OUTSIDE THE UNITED STATES—A minister, ambassador, consul, vice-consul or consular agent of the United States in such country, or any person agreed upon by the parties, can be taken by a commission appointed by the Court under its seal. Discretion allowed as to deposition of party testifying. Parties may agree upon the interrogatories, and mode of taking. Oath to be administered to witness. Deposition to be certified to the Court. It must be inclosed in a sealed envelope, directed to the clerk of the court and forwarded by mail or usual

conveyance. The judge authorizing the commission may issue subpoena for other witnesses. Either party may attend examination and put questions, provided each party shall pay cost of his own examination. The officer taking may demand a deposit from each party sufficient to defray the expense of such. If a party refuse to deposit they waive their right to examine.

§ 352. **Colorado**—WHO MAY TAKE IN THE STATE—All Courts, judges, justice and clerk thereof, justices of the peace, notaries, within their district and under their official seals. Out of the State, commissioner of deeds, notary. FORM—None specially, follow form of the State ordering the dedimus. NOTICE—Depends on residence. Upon five days' notice to the adverse party depositions may be taken out of the State by commission issued by the clerk of the court on written interrogatories, same to be attached to the commission issued to a person agreed upon by the parties or by the judge; if they can not agree, to any judge, justice of the peace, notary or to a commissioner of deeds. The adverse party may file and have attached to the commission cross interrogatories by giving three days' notice. If either party giving notice fail to attend, the attending party shall be entitled to five dollars per day for each day's attendance and to six cents per mile for each mile traveled, same to be taxed by the court where suit is pending, and for which attachment may issue. Adverse party may submit written interrogatories instead of attending.

§ 353. **Connecticut**—MAY BE TAKEN IN THE STATE BY—A judge or clerk of any court, justice of the peace, notary, commissioner of the Superior Court. Out of the State—By a notary, commissioner appointed by the Governor, or any magistrate having power to administer oaths. Out of the United States By—Any foreign minister, secretary of the legation, consul or vice-consul of the United States resident in that country. His official character can be proved by the Secretary of the United States. Court may issue commission to any person in the military or naval service of the United States who may administer oaths, etc., to persons in the service. Judges of the Superior Court, Court of Common Pleas, or District Court, when not in session, may issue a commission to take depositions of persons out of this State, notice being given to adverse party. Commissioners appointed by the laws of any other State or Government to take testimony in this State, may apply to the judge of any court of record, justice of the peace, notary or commissioner of the Superior Court, for a subpoena or *capias* to compel the appearance of any witness. Upon the refusal of the witness to comply, the officer issuing may commit them to prison. Subpoenas may be issued by any judge or clerk of any court, justice of the peace, notary or commissioner of the Superior Court, upon request, for the appearance of any witness before him, to give his deposition in a civil action, when such party is going to sea or out of the State, is 60 years of age or lives more than twenty miles from the place of trial, and may take his deposition on refusal to appear, the magistrate may issue a *capias*. If the witness refuse to depose, the magistrate may commit him to prison till he comply. Returned to Court unsealed or

with seal broken, shall be rejected by the Court. If the adverse party appears on notice and the party giving such notice fails to appear at the time and place stated, then costs shall be allowed to the adverse party. The returned deposition remains in the custody of the clerk of the court. Reasonable notice must be given to the adverse party, his agent or attorney, or left at his place of abode. Witnesses—Cautioned to speak the truth, carefully examine, subscribe to their deposition, make oath before the authority taking, the authority shall attest the same and certify that the adverse party or his agent was present (if so), or that he was notified, and shall also certify the reason of taking the deposition, seal it up, direct it to the Court where it is to be used, and deliver it, if desired, to the party at whose request it was taken. PERPETUATING TESTIMONY—Party desiring it may petition in writing any judge of the Superior Court, stating reasons, subject matter, name of witness and persons interested. If no reason for the contrary the judge shall arrange for such. Persons taking depositions may adjourn from time to time, giving notice to parties present. Depositions so taken must be sealed up and directed to the clerk of the County Superior Court where some of the petitioners reside; if non-residents of the State, then where some of the respondents reside, and he shall open and file them.

§ 354. **Delaware**—If it appear by affidavit necessary, the justice may make a rule that the deposition be taken before a commissioner named by him, unless otherwise agreed; the party applying shall file in writing all the questions to be put to the witness, giving at least four days' notice to the adverse party, who may file other questions. The justice shall forward a copy of the rule and questions to the commissioner. Deposition to be written, signed by the witness, certified by the commissioner and sealed up and sent to the justice. The witness must first be sworn by the commissioner, to answer the questions truly; neither party shall be present and no questions to be put but those sent by the justice.

§ 355. **District of Columbia**—DEPOSITIONS may be taken when witness lives beyond this District. When witness is going out of the District or United States and will not return in time for trial; when aged or infirm or cannot attend the trial may be taken before any court of the United States, commissioner or clerk of a court, chancellor, justice, notary, justice of the peace within the United States, when not interested in the cause. Reasonable notice of time and place must be given opposite party, with names of witnesses and officer taking. Unlawful to require opposite party to attend more than one place on the same day, officer taking to summon by the marshal any witness. Officer has power to compel attendance. Witness to be first sworn to tell the truth, the whole truth, and nothing but the truth. Adverse party has right to cross-examine. The questions and answers to be taken down in writing, stenographically, and then typewritten if desired, read to and signed by witness in the presence of the officer. If refusal is made, officer to so certify, with the reasons. Documents to be sealed up by officer and indorsed with the title of the cause, costs of

taking, by whom paid and by him mailed to the court where cause is pending. On motion, court may order a commission to take a deposition outside the District.

§ 356. **Florida**—The party desiring the deposition must prepare written interrogatories, deliver a copy to the adverse party or his attorney a reasonable time before applying for a commission, stating reasons for taking, date of application, name of commissioner, and file same with the Court. If the adverse party has no attorney and does not reside in the State, notice to be given by advertisement in a newspaper printed in applicant's county once a week for four consecutive weeks. On proof of the advertisement to the clerk or the Court a commission will issue. The adverse party may file cross-interrogatories and name of commissioner, serving a duplicate on the applicant. The applicant can serve notice of redirect interrogatories, with notice of time of application for a commission upon all the interrogatories. At the time mentioned the clerk or Court shall issue commission, and names of the commissioners selected by each of the parties, attaching the interrogatories filed by each and delivering same to the applicant. The commission shall make oath before a notary or judicial officer where the testimony is taken, that he is neither kin, attorney, nor agent of either party, nor interested in the result; that he will well and faithfully perform the duties of commissioner. Oath to be in writing, and returned with the commission. The commissioner shall swear each witness before taking the deposition. The parties or their attorneys may be present, and after the interrogatories may propound others germane to the subject, which shall be written down by the commissioner and become a part of the deposition. The commissioners shall enclose all the interrogatories, answers and commission, seal and write their names across the seals of the envelope, that the Court may recognize it as applicable to some particular cause. The usual initials of office and Christian names of the commissioners and others shall be sufficient. It may be returned by mail or person. The person returning it or taking it from the post office, other than the clerk, must make oath that he received it from the commissioner (or the postmaster, etc.); that it has been in his possession ever since, and has not been opened or altered.

§ 357. **Georgia**—A witness may be examined on interrogatories, by commission, at the instance of either party, in any civil cause pending in this State when the witness resides out of the county; when age, condition of health or business prevents attending at Court, or when about to remove from the county or leave home beyond the term of Court, or where he is the only material witness. Female witnesses are not obliged to attend Court. The party desiring it must prepare written interrogatories, with witness' name and residence, and serve a copy, with notice of filing, on the adverse party or his attorney. At the expiration of ten days a commission shall issue. If the adverse party is beyond the jurisdiction of the Court, or cannot be found, and has no attorney, a ten days' notice at the court house door will suffice. Notice must be served on each adverse party. The commission will issue a

blank allowing the party to select his commissioners, but the adverse party shall be allowed to select two. The commissioner shall be disinterested, having no relationship or interest to the parties. His compensation not exceeding two dollars per day, as cost in the suit. Neither party nor representative to be present. On refusal of witness to appear or answer, an affidavit presented to a judge of the Superior Court, or the ordinary, shall cause an order to issue to arrest and bring him before such judge or ordinary; after hearing his excuses he shall order the witness lodged in jail until he answers. This provision extends to commissions sent from the courts of other States in the United States. No witness shall be required to go out of the county, nor more than ten miles from his residence; he shall have court witness fees. Witnesses may write their answers in the presence of the commissioners. It shall be certified by the commissioners and returned with the commission. The answers to be made under oath, signed by the witness and attested by the commissioners, and place of execution shown. All papers, etc., to be sealed in an envelope, with the names of the commissioners written across the seal and directed to the officer of the Court. It can be sent by mail or express, by the party himself or by some private hand. The postmaster or express company receiving must certify to the fact. The postmaster or express agent delivering must certify to its reception by due course of mail or express, or the party delivering it by hand must make affidavit of the fact and of its freedom from alteration. The postmaster at the office to which it is directed shall immediately upon its receipt indorse upon it the fact of its reception by due course of mail, and at once deliver it to the clerk or presiding judge or justice. The clerk or judge receiving shall indorse thereon from whom received and the time; it shall be filed away unbroken and may be opened any time by written consent of counsel for both sides. A party failing to return or wilfully abstracting the commission shall be attached for contempt and otherwise dealt with until same is returned. The adverse party or his attorney may, in writing, waive the commission and the answers of the witness may be taken in virtue of such agreement. The person taking shall administer the usual oath to the witness under the penalties of perjury in this State. Exceptions must be in writing and notice given the opposite party before the case is submitted to the jury; provided, the same has been in the clerk's office for twenty-four hours. Depositions read on the first trial shall not be subject to formal exceptions in subsequent trials. In any court of record, either party may, without an order or commission, take the deposition of a witness, resident of the county or not, on giving adverse party five days' notice of time, place, and names of witnesses. To be taken before any commissioner appointed by the judge of the county Superior Court. The commissioner to summon witnesses and compel attendance. HIS FEES TO WIT: Examining each witness, \$2.00; certifying and returning testimony for plaintiff or defendant in each case, 50 cents; issuing subpoena, 25 cents. PERPETUATION OF TESTIMONY—Superior Courts may entertain, where the facts cannot be made immediately the subject of

investigation at law, and the common law proceedings under the code as available or as completely available as a proceeding in equity. Failure to appoint a commissioner by the judge of the Superior Court of any county, or a vacancy occurring in the office of commission, the clerk of said court shall act as such commissioner, all witnesses to be examined in the county of their residence, and before the commissioner or clerk acting as such. Commissioner has power, notice being given to the opposite party or his attorney, or a subpoena duces tecum being served, five days previous to the hearing, to require any witness or party to produce at the hearing books, writings and other documents in his possession, power, custody or control. A refusal to appear or answer without legal excuse shall be treated as contempt. Certification of same to the judge of the court where case is pending shall be punishable by the judge as committed before him.

§ 358. **Hawaiian Islands**—DEPOSITIONS—Any court of record, or its judges, in suits pending before them can order a commission to issue for the examination of witnesses residing in a foreign country or other circuit, upon oath, by interrogatories or otherwise, with full instructions as to taking. When it shall appear to the satisfaction of the court and that the witness is beyond the jurisdiction of the court, a resident of another circuit, dead or unable to be present at the trial. Notice to be given the adverse party, his agent or attorney, allowing twenty-four hours after notice and one day exclusive of Sundays for every twenty-five miles of travel, if he lives more than twenty-five miles from the place of taking the deposition. Who can take—A district magistrate, circuit judge or clerk, notary. **ABROAD**—Ministers, commissioners, consuls, vice-consuls. The witness to be sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth. The examination to be oral or by written interrogatories; same to be written by the officer or some one by him appointed, to be taken in his presence, to be read by, or to, and signed by the deponent. The officer then to annex his certificate, stating the time, place and manner of the taking, the cause for which it was taken, who were present, whether adverse party attended, stating notice, if any given. The deposition then to be enclosed in an envelope, sealed up, directed to the court or arbitrators before whom the cause is in trial, and delivered; and shall remain sealed until opened by direction of the court, arbitrators' or referees' objections to be made at the taking and noted on the deposition if upon written interrogatories. Witness may be summoned and compelled to attend the examination.

§ 359. **Idaho**—BEFORE WHOM TAKEN—Any judge, justice of the peace, notary, mayor or recorder of a city, clerk of a court of record or commissioner appointed by the Court, must be a disinterested party. Within the United States, no commission is necessary. Outside the United States, the clerk shall, upon request of the party, issue a commission to the officer or commissioner designated. No order of Court or affidavit necessary. If the commission contains the name of the officer, his attestation, officially certifying the same is sufficient. If his name is not specified and he have no official seal, then

his certificate shall be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record of his county. Notice must be given the adverse party, his agent or attorney, stating the cause, Court, time, place, and names of witnesses, allowing one day for each twenty miles party may have to travel, not exceeding thirty days. If the party nor his attorney reside in the State, notice may be filed in the clerk's office and published three weeks successively in the county where suit is pending and a copy mailed to the party or his attorney, allowing ten days. May be taken by either party in vacation or term time, after service of summons, without order of Court. The Court may fix the time. A witness is not obliged to attend outside his county. Officer can summon and compel attendance by reporting to any Probate or District Court of the county, and on refusal then to comply the Court will deal as for contempt. The deponent shall be sworn by the officer to testify to the truth, the whole truth, and nothing but the truth. The party producing him to first examine, then the adverse party, and then the officer or parties afterwards if they see cause. The deposition to be written down by the officer, or the deponent, or some disinterested person, in the presence and under the direction of the officer. After being read to or by the deponent, he shall subscribe to it. The officer shall annex his certificate and state that the deponent was sworn according to law; by whom the deposition was written; that it was written in the presence and under the direction of the officer; whether the adverse party was present; time and place of taking and the hours between. The officer shall sign and attest the certificate, seal with his official seal, if he have one. The officer shall seal it up and direct it to the clerk of the Court, indorsing on the envelope the names of the parties and the witnesses deposed. Must be filed in Court one day before trial. Objections must be made before trial. It may be used in a second trial or in any other action between the parties for the same cause, if it has remained during the time on file in the Court. DEPOSITIONS TAKEN FOR PERPETUATING TESTIMONY may, at any time, be published by order of the Court in the office of the clerk where filed and entered upon record, on the motion of any one interested, at the cost of the party.

§ 360. **Illinois**—WHO MAY TAKE—The testimony of any witness residing or being within the State necessary in any suit in chancery in this State, may be taken before any judge, justice of the peace, clerk of a court, master in chancery or notary public, without a commission or filing interrogations for such purpose, on giving the adverse party or his attorney ten days' notice of the time and place of taking, and one day in addition (Sundays inclusive) for every fifty miles' travel from the place of holding the Court to where such deposition is to be taken. If the party entitled to notice and his attorney resides in the county where the deposition is to be taken, five days' notice sufficient. **RESIDENT WITNESS**—Upon satisfactory affidavit being filed, depositions of witnesses residing in this State, to be read in suits at law, may be taken in like manner and upon like notice; where the witness

resides in a different county from that in which the Court is held, is about to depart from the State, is in custody on legal process, or is unable to attend such Court on account of advanced age, sickness or other bodily infirmity. NON-RESIDENT WITNESS—Any witness residing within this State more than one hundred miles from the place of holding the Court, or not residing in this State, or who is engaged in the military or naval service of this State or the United States, and is out of this State, necessary in any civil cause pending in any court of law or equity in this State, ten days' notice to be given the adverse party, or his attorney, together with a copy of the interrogatories to be put to such witness, and to sue out from the proper clerk's office a *dedimus potestatum* or commission, under the seal of the Court. When the deposition of any witness is desired to be taken and the adverse party is not a resident of the county in which the suit is pending, or is in default, and no attorney has appeared for him in such cause, upon filing an affidavit of such fact and stating the place of residence of such adverse party, if known, or that upon diligent inquiry, his place of residence cannot be ascertained, notice may be given by sending a copy thereof by mail, postage paid, addressed to such party at his place of residence, if known, or if not known, by posting a copy of such notice at the door of the court house where the suit is pending, or publishing the same in the nearest newspaper, and when interrogatories are required, filing a copy thereof with the clerk of the Court ten days before the time of suing out such commission. ORAL EXAMINATION—When a party shall desire to take the evidence of a non-resident witness, to be used in any cause pending in this State the party desiring the same, or where notice shall have been given that a commission to take the testimony of a non-resident witness will be applied for, the opposite party, upon giving the other three days' notice in writing of his election so to do, may have a commission directed to take such evidence, upon interrogatories to be propounded to the witness orally; upon the taking of which each party may appear before the commission, in person or by attorney, and interrogate the witness. The party desiring such testimony shall give to the other the following notice of the time and place of taking the same, to wit: ten days, and one day in addition thereto (Sundays included) for every one hundred miles' travel from the place of holding the Court to the place where such deposition is to be taken. ORAL EXAMINATION, COSTS—When a party to a suit shall give the opposite party notice to take a deposition upon oral interrogatories, and shall fail to take the same accordingly, unless such failure be on account of the non-attendance of the witness, not occasioned by the fault of the party giving the notice, or some other unavoidable cause, the party notified, if he shall attend himself or by attorney, agreeably to the notice, shall be entitled to \$2.00 per day for each day he may attend under such notice, and to six cents per mile for every mile that he shall necessarily travel in going to and returning from the place designated to take the deposition, to be allowed by the Court where the suit is pending, and for which execution may

issue. HOW TAKEN AND CERTIFIED—Previous to the examination of any witness he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon the officer authorized to take depositions shall proceed to examine such witness upon all such interrogatories as may be inclosed with or attached to any such commission as aforesaid and which are directed to be put to such witness, or where the testimony is taken upon oral interrogatories, upon all such interrogatories as may be directed to be put by either party litigant; and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness; after which, it shall be the duty of the person taking the deposition to annex at the foot thereof a certificate, subscribed by himself, stating that it was sworn to and signed by the deponent, the time and place, when and where taken. Every such deposition, taken and subscribed, and all exhibits produced, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up, and directed to the clerk of the Court in which the action shall be pending, with the names of the parties litigant indorsed thereon; provided, that when any deposition shall be taken as aforesaid, by any judge, master in chancery, notary public, or justice of the peace out of this State, or other officer, such return shall be accompanied by a certificate of his official character, under the great seal of the State, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken. Every deposition that shall be returned to the Court unsealed, or the seal of which shall be broken previous to its reception by the clerk to whom it is directed, shall, if objection be made thereto in proper time, be regarded by the Court as informal and insufficient. It shall not be lawful for any party litigant or the clerk of the Court into which any deposition may be returned, as aforesaid, to break the seal of the same, either in term time or in vacation, unless by written consent of the parties thereto or their attorneys, or by the order of the Court, duly entered of record. And if any such person or clerk shall presume to open any such deposition when taken and returned as aforesaid, without such consent or order of the Court, he shall be considered guilty of a contempt of Court, and may be punished accordingly; provided, that it shall not be considered an offense for the clerk to break open any such deposition, when it is doubtful from the indorsements made thereon whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until the consent of the parties or their attorneys is first had and obtained therefor, or until the Court shall have entered the order therefor. WRITING—The party, his attorney, or any person who shall in any wise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition which may at any time be taken under this act, or be

present during the taking of any deposition by written interrogatories; and every deposition so dictated, written or drawn up, or during the taking of which any such party, his attorney, or any person so interested is present when the same is taken upon written interrogatories as aforesaid, shall be rejected by the Court as informal and insufficient. EVIDENCE—Every examination and deposition which shall be taken, and returned according to the provisions of this act may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open Court, on the hearing or trial thereof. A FURTHER EXAMINATION—If it shall appear to the satisfaction of the Court that any witness has not given full or proper answers to the interrogatories or cross-interrogatories accompanying the commission to take his testimony, or that a further examination ought to be allowed to either party for the ends of justice, may allow another commission to issue to the same or other commissioner, to further examine the witness in such manner and upon such conditions and notice as the Court shall direct. ATTENDANCE OF WITNESSES—Every officer required to take depositions in this State, or by virtue of any commission issued out of any court of record in any other State, Territory or country, shall have power and authority to issue subpoenas, if necessary, to compel the attendance of all witnesses, in the same manner as witnesses are subpoenaed in other cases, and any witness neglecting or refusing to obey such subpoena, or refusing to testify, or to subscribe his deposition when correctly taken, the officer issuing such subpoena shall at once report in writing the facts accompanying the same with a copy of the commission or other authority received by him, together with a copy of the subpoena and the return of service thereof, and file the same in the office of the clerk of the Circuit Court of such county, and thereupon attachment shall issue out of said Court against such witness, returnable forthwith, before the Circuit Court of such county if in term time, or before any judge of said Court if in vacation, who shall hear and determine the matter in a summary way, and it appearing to the Court to be wilful, and without lawful excuse, the Court shall punish such witness by fine, and imprisonment in the county jail as the nature of the case may require in cases of contempt of Court. FEES OF WITNESSES—Every person attending to be examined shall be entitled to compensation at the same rate as is allowed to witnesses attending courts of record in this State; and the party requiring such examination shall pay the expense thereof, but may, if successful in the suit, be allowed for the same in the taxation of costs. On the trial of every suit in chancery, oral testimony shall be taken when desired by either party. TESTIMONY PERPETUATED—Where any person shall desire to perpetuate the remembrance of any fact, matter or thing, necessary to the security of any estate, real, personal or mixed, or any private right, such person, upon filing a petition supported by affidavit in the Circuit Court of the proper county, setting forth, briefly and substantially, his interest, claim or title concerning which he desires to perpetuate evidence, the names of all other persons interested or

supposed to be interested therein, and whether there are any persons interested therein whose names are unknown to the petitioner, and the name of the witness proposed to be examined, may sue out from such court a *dedimus potestatem* or commission, authorizing the deposition of such witness. Such petition shall be docketed by the clerk as other cases in equity, the petitioner being designated as plaintiff, and the persons stated to be interested, as aforesaid, as defendants—the parties whose names are unknown being designated as “unknown owners.”

**SEVERAL COMMISSIONS MAY ISSUE**—Several commissions may be issued, upon the same petition, to different commissioners or officers, either within or without this State, to take the testimony of different witnesses, or witnesses residing in different places, or the same commissioners or officers may proceed from place to place to take the same.

**NOTICE**—Before taking the testimony of a witness, the person suing out such commission shall give to each and every person known to be interested in the subject matter of such testimony, or his attorney, or, if a minor, his guardian, or, if he has no guardian, or if his guardian is interested, to such guardian *ad litem* as shall be appointed by the Court, or to his or her conservator, if he or she has one, two weeks’ notice, in writing, of the time and place when and where the testimony will be taken, which notice shall state when and where the petition was filed, the names of the parties and witnesses mentioned in the petition, and a short statement of the subject matter concerning which the testimony is to be taken.

**NOTICE TO NON-RESIDENTS, ETC.**—Notice to non-resident parties, or such as cannot be found so as to be personally served, and to unknown owners, may be given in the same manner as is provided for notifying non-resident parties in suing out a commission to take testimony in a case pending.

**COURT NOTICE**—When in the opinion of the Court no sufficient provision is made by law for giving notice to parties adversely interested, the Court may order such reasonable notice to be given as it shall deem proper. Every person who may think himself interested in the subject of a deposition about to be taken, may attend, by himself or his attorney, at the time and place of taking such testimony, and may examine and cross-examine such deponent, and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, as near as possible in the exact words of such deponent, which said questions and answers, when reduced to writing, shall be distinctly read over to the witness, and if found to be correct, shall be signed by him in the presence of the officer before whom the same is taken, who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken, and shall annex at the foot thereof a certificate, subscribed by such officer, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken; and all such depositions shall be carefully sealed up and transmitted to the clerk of the Circuit Court of the county from which such *dedimus* shall have been issued, within thirty days from the time of taking; who shall thereupon enter the same at

large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person for whose benefit it shall have been taken. All depositions taken under the provisions of the seven preceding sections, or a certified copy of the record thereof, may be used as evidence in any case to which the same may relate, in the same manner and subject to the same conditions and objections as if it had been originally taken in the suit or proceeding in which it is sought to be used; and parties notified as "unknown owners," in the manner hereinbefore provided, shall be bound to the same extent as other parties. ELECTION CONTEST—Whenever a notice shall have been given of intention to contest an election, either party may proceed to take testimony of any witness, on giving to the adverse party or his attorney ten days' notice of the time and place of taking the same, and one day in addition thereto (Sunday inclusive) for every fifty miles' travel from the place of residence of such party to the place where such deposition is to be taken. If the party entitled to notice resides in the county where the deposition is to be taken, five days' notice shall be sufficient. A copy of the notice to take depositions, with proof of the service thereof, with the deposition, shall be sealed up and transmitted by mail or otherwise to the Secretary of State, with an indorsement thereon showing the names of the contesting parties, the office contested, and the nature of the papers. The officer before whom depositions are taken shall have power to compel the production of papers, and the attendance of witnesses; and the same proceedings may be had to compel the attendance of witnesses as are provided in the cases of taking depositions to be used in courts of law and equity. Depositions in actions before justices of the peace to be taken upon like notice and in like manner.

§ 361. Indiana—Commission to take only necessary when outside the United States. No order of Court necessary; the clerk can issue it. When the commission contains the name of the officer, his attestation is sufficient, but if not containing the name and the party has no official seal, then the certificate must be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record where the officer exercises his duties. Must be filed with the Court at least one day before trial. Taken anywhere, before any judge, justice of the peace, notary, mayor or city recorder, clerk of a court of record or commissioner appointed by the Court. Must be disinterested person. Reasonable notice to be given the adverse party of the cause, court, time, place and names of the witnesses. Officer can compel the attendance of witnesses by reporting fact to the Superior or Circuit Court of the county. Deponent to be first sworn to testify the truth, the whole truth and nothing but the truth. He shall then be examined by the party producing him, then by the adverse party and by the officer or parties if they desire. The deposition to be written by the officer or the deponent or some disinterested person, in the presence and under the direction of the officer, read to or by the deponent and subscribed by him. Officer to annex his certificate, stating that

the deponent was sworn according to law, who wrote the deposition, if in the presence of the officer, whether the adverse party were present, time, place and the hour of taking. Officer shall sign and attest the certificate, and seal it if he have an official seal. The same to be then sealed up in an envelope, direct it to the clerk of the Court where the cause is pending, indorse on the envelope the names of the parties and the witnesses whose depositions are inclosed.

§ 362. **Indian Territory**—Depositions may be taken in this Territory before any judge or clerk of a court of record, a justice of the peace, mayor of a city or notary public. May be taken out of the Territory before commissioner appointed by the Governor, a judge of a court, a justice of the peace, mayor of a city, notary public, or anyone empowered by a commission, directed to him by consent of the parties, or by order of the court. The certificate of the county court clerk must be attached to depositions taken out of this Territory, stating, under the court seal, that such officer was an acting judge or justice of the peace and duly commissioned as such. Not necessary for officers in this Territory. If taken outside the United States the official character of the officer must be attested by the seal of his government. Reasonable written notice must be given the adverse party, signed by the party giving it, or his attorney, and must specify the time, place and action when used. May be served as the summons is served. If the adverse party nor his attorney reside in the county, notice in the office of the county clerk is sufficient notice to allow one day for each thirty miles and one day for preparation if less than one hundred miles, two days' if more. If the travel is by boat, cars or other public conveyance, and exceeds fifty miles, the time ordinarily required is sufficient with the time for preparation. If less than thirty miles, reasonable opportunity is sufficient. If witness is unable to attend from age, infirmity, or imprisonment, can adjourn until the next day, and to a more convenient place by posting notice on the front door, before noon, where it was to be taken. Affidavit must be made to that effect, certified by the officer. Court may appoint commissioner to take interrogatories. Neither party to the suit or their attorneys to be present at the examination unless both or the opposite party has been notified. Officer can subpoena witness. Must be written in presence of the officer, the officer's certificate to state time and place of taking, witness was sworn before taking, was written, read and subscribed to by the witness, in officer's presence, by whom written, who were present. Same to be sealed up by the officer and addressed to the clerk of the court with a note showing them to be depositions and style of case. May be mailed or delivered to clerk. If outside the Territory, may be delivered by party taking, who shall make oath to the clerk that the same have not been opened by him. Must be filed with the case. Parties outside the Territory may take depositions on application to the county judge.

§ 363. **Iowa**—May be taken before any person authorized to administer oaths, or by commissioners on interrogatories. If the action is by equitable proceedings and to be tried on written evidence, then, either

party may take the deposition. Who may act—The clerk or judge of any court of record or any commissioner of deeds appointed by the Governor of this State to act in another State, any notary, consul or consular agent of the United States, within their jurisdiction. Reasonable notice to be given the adverse party as to name of witness, time, place, when and where taken. Cannot take on election day or the Fourth day of July. Party desiring deposition may select the commissioners or the parties may agree, or the Court may appoint any other individual. Notice—When served on the attorney, ten days; on the party, five days, allowance for travel of one day for each thirty miles. No party is required to take depositions when the Court is in actual session. Notice to be accompanied with the interrogatories to be asked. Who to Serve Notice—The clerk of the Court where the case is pending. If in an inferior court, the clerk of the Circuit Court. Cross-Interrogatories—At or before the time the adverse party may file cross-interrogatories. If not filed, the clerk shall file the following: 1. Are you directly or indirectly interested in this action? and if interested, explain the interest you have. 2. Are all the statements in the foregoing answers made from your personal knowledge? and if not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? if not, now show what is from information, and give its source. 3. State everything you know concerning the subject of this action favorable to either party. Notice, or notice and interrogatories, may be served by the same persons on the same persons, in the same manner, and may be returned, and the return shall be authenticated in the same way, as should be an original notice in the same cause when served other than by publication. It may be served on the attorney of the adverse party personally. Deposition Commission Form—Issues in the name of the Court and under its seal. It must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner, instructions to guide him, and a statement of the cause and court in which the testimony is to be used, and a copy of the interrogatories on each side appended. How Taken—Person taking must cause the interrogatories propounded to be written out, the answers immediately underneath; as near the language of the witness as practicable, if parties require it. Must be read, sworn and subscribed to by the witness. Exhibits made by the witness must be appended to the deposition. Officer to certify that it was subscribed and sworn to by the deponent at the time and place mentioned. The deposition, commission, etc., to be sealed up and returned to the clerk of the Court by mail unless otherwise agreed by the parties. Neither party to be present, unless both are present, or their attorneys, when taken upon interrogatories. The certificate shall state such fact. The title of the cause to be on the outside of the envelopment. When by the laws of any other State or country testimony may be taken in this State to be used therein, the persons authorized to take such depositions have power to issue subpoenas and compel obedience thereto, to administer oaths, and to do any other

act of a court which is necessary for the accomplishment of their purpose. Any sheriff or constable shall serve their subpoenas and make return. If a party to a suit in his own right, on being subpoenaed, fail to appear and testify, the other party may have a continuance. At the cost of the delinquent. If the party shows that he could not have a full personal knowledge of the transaction, the Court may order his pleading to be taken as true, but subject to reconsideration during the term of the Court. A deposition to be taken before a judge or justice of the peace merely by name of office must contain an authentication by the clerk of the Court under his seal of office, the fact that the person who took the deposition is really such officer. Taken in shorthand, the writer shall be sworn to take correctly and truly, and make correct extension into long hand, typewriting or print, the extension to be certified by the person taking and shall be received as the deposition. The shorthand notes shall be read to the witness, who shall sign, and file them with the extension. A defendant may examine witnesses in civil and criminal cases, conditionally or on commission.

§ 364. **Kansas**—May be used only when the witness is not a resident of or absent from the county, when age, infirmity or imprisonment prevents, or when the oral testimony of the witness is not required. Either party may take, after service upon the defendant. Before whom—In this State before a judge or clerk of a court of record, county clerk, justice of the peace, notary public, mayor, chief magistrate of any city or town corporate, before a master commissioner, or any person empowered by special commission. Authority must be derived from the State, if for use in the State. Out of the State, for use in the State, may be taken before by a judge, justice or chancellor of any court of record, a justice of the peace, notary, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the Governor of this State, or any person authorized by special commission from this State. Officer taking must not be related or interested. Any court of record in this State or any judge thereof can grant a commission. Person must be named, Court seal attached, written interrogatories prepared, unless parties agree otherwise. Written notice to be given the adverse party (unless a special commission) allowing time for travel and one day's preparation, exclusive of Sunday. The action, name of Court, time, and place to be specified. Adjournment from day to day, if stated in the notice. Notice of taking may be given by publication in the county newspaper three consecutive weeks, when the adverse party is absent or a non-resident of the State. If there is no county paper, then the one circulating there generally. It must contain all that is required in a written notice and proved in the usual way. If taken by officers having an official seal, it must be authenticated therewith and their signature. Officers having no official seal who reside out of this State shall sign and certify to the deposition and in addition have their act and qualification certified to by the official certificate and seal of any secretary or officer of the territory having the great seal thereof, or of the clerk or prothonotary of any court having a seal. If the deposition is taken in this State by any officer having

no seal or within or without the State by a special commissioner, the officer's official signature is sufficient. The deposition to be written in the officer's presence either by the witness, a disinterested person, or by the officer, and subscribed to by the witness. It must be sealed up and indorsed on the outside with the title of the cause, the name of the officer and by him addressed and transmitted to the clerk of the Court of the action, there to remain sealed until opened by order of the Court. It may be read in any stage of the action, or other action in the same matter. The officer taking must certify on the deposition that the witness was first sworn to tell the truth, the whole truth and nothing but the truth, by whom the deposition was reduced to writing, that it was written and subscribed in the officer's presence, that it was taken at the time and place specified in the notice. The filing of the deposition must be at least one day before the trial. Fees for taking in this State—Swearing each witness, 10c; each subpoena, attachment, order or commitment, 50c; Deposition, per 100 words, and certificate, 15c; deposition can be held for fees. The fees of the sheriff and witnesses shall be added to the cost of taking. Witness fees, per day, \$1.50; witness fees before a justice of the peace, per day, 75c, and per mile travel, 5c.

§ 365. **Kentucky**—Notaries not authorized to take. Commissioners of deeds may take or may be taken on commission.

§ 366. **Louisiana**—In the State—The commissions to take may be issued to a justice of the peace or any person authorized to administer oaths. The interrogatories to be served on the adverse party three days previous to forwarding them. When interrogatories have been annexed to the commission and communicated to the adverse party or his counsel, notice of time and place is unnecessary. **COMMISSIONERS OUT OF COURT**—The clerks of the parish and district courts of the State (save New Orleans parish) are constituted commissioners to take depositions. A party to a suit pending, desiring depositions, shall apply to the clerk of the court, who will proceed to take the testimony in writing, either himself or through some disinterested person in his presence, after giving, at least, two days' notice to the adverse party, or their attorneys, of the time and place; if the party or his counsel reside out of the parish, ten days' notice. The deposition shall be sworn to and signed by the witness, certified to by the clerk, under the seal of the court, and filed in the records of the suit. Should objections be made to the taking of any party, the clerk to take down the question and its answer and the objection made and by whom, on which the court will decide. The clerks of the court are empowered to compel attendance of witnesses, by subpoena or attachment, in the name of the court. In the parish of Orleans notaries public and clerks of district courts are appointed commissioners, with all powers granted to the clerks of courts outside, they may proceed to take, on twenty-four hours' notice to the adverse party or his counsel, of the time and place. When taken, the depositions to be enclosed in an envelope and delivered to the clerk of the court where the suit is pending. Justices of the peace in this

State can compel the attendance of witnesses before commissioners of other States taking depositions here. A party desiring the testimony of witness in another State, to apply to any judge having jurisdiction of the cause, and not in open court, and it shall be sufficient simply to swear to its materiality. Service of three days' notice to be given the adverse party. Commission may issue any time thereafter. When the commission is returned, the party to use it must, after filing it in the clerk's office, file a notice or take a rule to serve on the adverse party or his counsel, to show cause why the same should not be used as testimony. The adverse party is bound to urge his objections to any irregularities before trial. If the witness resides out of the parish, in or out of the State, he shall file his answers to the interrogatories within the period fixed by court, on the motion of the party interrogating. Notice of order fixing delay, with copy of interrogatories, to be served on the attorney representing the party interrogated; provided that when such party resides out of the parish his answers shall be taken by commission. Fees for constable or sheriff—Subpoenas, 50c; attachments, \$1.00; for commissioners, notice and copy, 25c; each subpoena or attachment and copy, 25c; writing deposition, per 100 words, 20c; affixing seal, 25c; swearing witness, 20c.

§ 367. **Maine**—Allowed when deponent is aged, infirm, sick or unable to attend, or resident out of, or is absent from the State, or bound to sea, going out of the State, or more than sixty miles from place of trial, or is a judge of the Supreme, Superior or Probate Court and prevented by official duty. When deponent resides in another town from the trial, or was resident of same town, but subsequently removed or died. When deponent confined in prison until after trial. May be taken before a justice of the peace, notary public, or a commission, when the same are disinterested parties. On application to a justice of the peace, or notary public, he may issue a summons to any deponent, except the adverse party, to appear at a designated time and place to give his deposition and shall issue notice to the adverse party to be present. The deposition may then and there be taken by him or any other justice or notary, but the deposition of the adverse party may be taken by commission. Notice to adverse party shall be served on him or his attorney, by reading it in his presence and hearing or by giving it to him or leaving at his place or last abode an attested copy. Service may be made by officer or other person and proved on his affidavit. No attorney is recognized unless his name is indorsed upon the writ, or the summons left with defendant, or he has appeared for the party in the cause, or given notice in writing that he is attorney for the adverse party. Notice by the justice or notary to one or more of the plaintiffs or defendants is sufficient. The adverse party to be allowed one day for each twenty miles' travel, Sunday excepted. Verbal notice is sufficient, and when taken out of the State and not under a commission the adverse party shall have due notice. A witness may be compelled to attend and depose, but not to travel more than thirty miles. Deponent to be first sworn to

tell the truth, the whole truth, and nothing but the truth. Then examined by the party producing him, verbally or by written interrogatories, and then by the adverse party, by the justice and parties, if they see cause. Deposition to be written by the officer, or the deponent or some disinterested person, in the presence and under the direction of the officer; it shall be read to or by the deponent and subscribed to by him. If deception is used in taking, the deposition may be rejected. The officer, after the taking, shall certify and annex to the deposition: that the witness was sworn and when; by whom the deposition was written, and in his presence and under his direction; whether the adverse party was notified and attended; the cause and names of parties; the trial court, time and place of cause for taking. The officer shall deliver the deposition to the court, or shall close and seal it up and direct it to the court or referees. A deposition shall not be used at trial if it can be shown by adverse party that the cause for no longer exists. OBJECTIONS to the competency of a deponent or to questions or answers may be made when the deposition is produced, but if taken on written interrogatories the objection shall be made before it is answered. Depositions may be used in a second suit in the same cause. The court may admit or reject depositions taken out of the State. Justices of the Supreme Court may issue commissions to take, outside the State, for use in suits in the State.

Depositions in perpetuum may be taken when requested in writing under oath, briefly stating title, interest, claim, names of parties interested and witnesses desired; present same to a judge or register of probate, notary, clerk of the Supreme Court, or justice of the peace and quorum, with request to take the deposition; he shall then give notice of time and place of taking to all persons, the same as in other depositions. May be used in civil suits for petitions for partition of land, libels for divorce, prosecutions for maintenance of bastard children, petitions for review, trials before probate courts, arbitrators, referees and county commissioners; in cases of contested senatorial or representative elections depositions or affidavits may be taken in applications for pensions, bounties or arrears of pay under any United States law. The governor may appoint, with the advice and consent of the council, upon the written recommendation of any judge of the Supreme Court, competent stenographers of either sex, as commissioners to take depositions in all cases and disclosures of trustees. They shall take the oath of office, act throughout the State, hold office four years, pay \$5.00 for their commission, have the same powers in taking depositions of trustees as justices of the peace. Depositions may be taken stenographically with consent of the parties to the suit, the notes to be transcribed in full, by questions and answers read to the deponent, and signed by him, unless reading is waived by him, no changes to be made, unless in the presence of the counsel who attested the taking. All facts to be stated in the commissioner's certificate as to reading, changing, etc. Same fees allowed them, as to justices of the peace, with twenty cents per page addi-

tional for transcripts. Fees for Stenographic Commissioners: Travel, per mile one way, and not over 10 miles one way, 12c; taking transcripts, per page, 20c; subpoenas, 10c; taking affidavit or deposition of a trustee, 20c; writing the same with caption and notifying the parties and witnesses, per page, 12c.

§ 368. **Maryland**—Courts of law and any of their judges in recess, upon written application filed by interested parties in causes before them, may direct their clerk, or the register of wills, to issue a commission for taking the deposition of witnesses outside this state who cannot be brought into court. Same duly attested to be admitted as evidence. The depositions of such witnesses may be taken by either party to a cause in this State upon giving not less than five days' notice to the opposite party of the time and place where the testimony is to be taken, the name of the commissioner, notary or justice of the peace before whom the same is proposed to be taken and names of witnesses. When taken same to be signed by witness, unless waived by consent of the parties, and returned to the court where cause is pending. Formal notice may be dispensed with by agreement of parties. Testimony of non-residents may be taken in the same manner. The circuit courts, or their judges, shall appoint three commissioners for the court's county, and each of the Baltimore civil courts shall appoint two commissioners for their courts to take depositions when required in their courts. Such commissioners must take an oath before a judge or justice, "that he will faithfully and impartially execute the duties of commissioner aforesaid, according to the best of his judgment." Same to be filed among the court's records. Either party in any action in said courts, after due notice to the other, or his attorney, agreeably to the court's rule, may take the deposition before any of the said commissioners. The opposite party shall be entitled to cross examine such witness, or to examine them on notice before the same or any other commissioner. Depositions shall be certified and returned by the commissioner to the court. If the court is any other than the one by which he was appointed then he shall have annexed to his return a certificate by the clerk under the seal of the court that he is commissioner.

Any person may have the deposition of a witness taken before such commissioner, when apprehending himself to be interested by giving ten day's notice to all opposite parties, their agent, attorney or guardian. An interested minor may have a guardian appointed for the purpose of having such deposition taken.

Depositions to be written by the commissioner, signed by deponent, certified to by the commissioner and by him lodged with the clerk of the court which appointed him. The clerk shall record same and receive same compensation as for recording a deed. Courts prescribe fees.

§ 369. **Massachusetts**—Depositions may be taken in this State when the witness lives more than thirty miles from the place of trial, or is about to go out of the State, or is sick, infirm or aged. Application may be made to a justice of the peace, special commission, who shall issue notice to the adverse party or his attorney or agent to appear before him or any other justice of the peace or special commissioner at the time

and place appointed for taking. If there are several plaintiffs, defendants or parties on either side, a notice served on either of them shall be sufficient.

Taken out of the State in any other manner, if taken before a notary or other person authorized, may be admitted at the discretion of the court but not unless the adverse party had sufficient notice.

May be taken in this State for use in other States or governments under the same conditions before a justice of the peace of this State, or before commissioners appointed by such State or government.

Depositions to perpetuate testimony may be taken in like manner.

May be taken out of the State before a commission issued to one or more competent persons by the court trying the case, or before a commissioner appointed by the governor for that purpose, in or outside the United States, subject to the same conditions and objections as if taken in this State. Unless otherwise ordered the same to be taken on written interrogatories filed in the clerk's office exhibited to the adverse party or his attorney, and cross-interrogatories to be filed by him, if he desires.

If the defendant fails to appear no notice of taking required to be given him.

Notice to be served by delivering an attested copy not less than twenty-four hours before the appointed time, allowing one day for every twenty miles of travel, excluding Sundays. May be verbal by the justice or be waived by the party in writing.

The deponent to be sworn to the truth, the whole truth and nothing but the truth. The officer to examine, and the parties if they desire. Testimony to be in writing. The party producing the deponent shall first examine either upon verbal or written interrogatories, then the adverse party, after which either party may propose further interrogatories. The deposition to be written by the officer or by the deponent, or by some disinterested person in the presence and under the direction of the officer. It shall be read by or to the deponent and subscribed to by him. The officer shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request it was taken, the cause or suit, the reason for, and whether the adverse party attended, if not, why, and statement of notice, if any, sent. The deposition to be delivered by the officer to the court, arbitrators, referees or parties before whom the cause is pending, or enclosed and sealed by them and directed to them, and shall remain sealed until opened by them.

§ 370. Michigan—Taken in this State. Before any judge of a United States Court or State Court, or any foreign court; any commissioner of a Circuit Court in Michigan, or of the United States or any State, or any commissioner for Michigan, or any consul, consular officer, justice of the peace, notary authorized by this State or any State or of the United States, or any foreign country to administer oaths not of counsel or attorney of either party nor interested in the cause. The seal of such court or official or a certificate under the seal of any court of record shows authority. Reasonable notice to be given the adverse

party, stating names of witnesses, time and place of taking and name of party before whom taken. Any person may be compelled to appear and depose. Deposition may be taken under commission issued by the judge of the court. Written interrogatories may be attached. Courts of record have power to compel the attendance of witnesses and the production of books. Witness to be sworn. Can also be examined orally. Testimony can be written stenographically transcribed under the direction of the officer. Must be signed by the witness and certified to by the officer. Signatures of witnesses may be waived by agreement of parties. When deposition taken, officer must indorse. Deposition to be enclosed and indorsed by the official stating the deposition was taken and scaled up by him and how sent, also the title of court and cause, and signed. To be sent by mail or otherwise to the court where the cause is pending.

Fees for taking, certifying, sealing, and forwarding, \$2.00. For each 100 words, 10c. Copies furnished, per 100 words, 3c. Each party to pay for their own examinations. Witnesses in a court of record, per day, \$1.00. Witnesses before a board or officer, per day, 75c. Traveling, 10c per mile from witnesses' residences.

§ 371. Minnesota—In this State—Any person qualified to take acknowledgments may take. Notice to agent or attorney of the adverse party is sufficient. Served on one of the parties is sufficient; twenty-four hours' notice required. Witness to be sworn to the truth, and examined by the parties or the officer, either verbally or by written interrogatories. Party producing the deponent shall first examine. Deposition to be written by the officer or the deponent, or some disinterested person, in the presence of the officer, to be read and subscribed to by the deponent. Officer to annex his certificate. The deposition to be returned by mail to the court where the cause is pending. If the party giving notice fails to appear and the adverse party does appear, the court shall allow the adverse party such sum as he shall deem proper for attorney's fees and traveling expenses. If taken out of this State, when an issue has been joined in an action and a non-resident witness is material, and an eight-day notice has been served upon the adverse party before application. Second—when in an action in a court of record the time of answering the complainant has expired and the defendant has not answered or demurred to the complaint, and it appears upon application of the plaintiff that the testimony of a non-resident witness is necessary to establish facts stated in the complaint and to enable the court to render judgment. Any officer authorized to administer oaths in that State may take. Written notice being served upon the adverse party. Time being allowed for travel and preparation. Officer shall designate time and place. Witnesses to be sworn and the testimony written by the officer. Proceedings may be adjourned from day to day. Either party may appear in person or by attorney and take part. The officer to read to the witness his testimony when completed and after qualifying it the witness to sign it. The officer then to annex the notice for taking it (or the order) and his certificate under his hand and official seal (if

he have one) stating his office and that by virtue thereof he was authorized to administer an oath that the witness was sworn before testifying to tell the truth and nothing but the truth relative to the cause specified in the order. To perpetuate testimony—Party desiring shall make a brief statement in writing of his title, claim and interests, parties in interest, their residence, etc. Name of witness, same to be delivered to the judge of a court of record, who will give notice and take.

§ 372. **Mississippi**—In the State, may be taken in civil causes in the Circuit Court; when the witness is about to leave the State, is aged, sick or unable to attend the court. When it shall depend on the testimony of a single witness. When the witness shall be a judge of the Supreme or Circuit Court, or chancellor, or any officer of the State or United States and on account of duties is unable to attend court. When a clerk, a court, a sheriff, or justice of the peace shall be required beyond the limits of his county residence. A female, a resident of the State more than sixty miles from the place of trial. The deposition may be taken of a witness in a civil cause before a justice of the peace, when the witness resides in a different county from the justice and under the same circumstances as the Circuit Courts. Affidavit shall be made by the party desiring the deposition, that the witness is material, the reasons for taking, same to be attached to the deposition. May be taken before any officer authorized to administer oaths, on ten days' notice to the adverse party or his attorney of time and place of taking. In cases of emergency, expressed in the notice, shorter time shall be sufficient.

If out of the State, party desiring the taking, shall file interrogatories with the court clerk, or justice of the peace in cases before them, serve adverse party or his attorney notice ten days before issuing the commission. The adverse party may file cross-interrogatories; the clerk or justice shall then issue a commission, annex the interrogatories and cross, as filed; the witness shall be examined by the commissioner, and may be cross-examined by the adverse party, the party desiring the deposition may examine in rebuttal. If the adverse party resides out of the State or his residence is unknown and he have no agent or attorney resident, the papers for taking may be filed with the clerk or justice. A commission may be directed to one or more in the alternative, by name, or to any judge of a court of record, justice of the peace, mayor or chief magistrate of a city or town, commissioner appointed by the governor of this State, or to any one authorized to administer oaths where the deposition is taken. Witnesses to be sworn, the commissioner to examine impartially on the interrogatories, etc. If within the State the officer may swear the witness and examine verbally or in writing as put by the parties, testimony to be fairly written down by the officer, the witness or a disinterested person in the officer's presence, and subscribed to by the witness; same with all papers and the officer's certificate, to be sealed up and directed to the clerk of the court or the justice, and transmitted in a safe, convenient manner. The clerk or justice shall open same, indorse on the time of their receipt and opening, and deposit them

among the papers in the cause. The examination may be adjourned from day to day on giving notice to the parties. Depositions to perpetuate testimony may be taken in same manner through the chancery court. Deposition Fees—Administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c.

§ 373. **Missouri**—When the witness resides out of the State the party desiring may sue out of the court or its clerk, a commission to take the deposition. If before a justice of the peace, party may sue out of a county court of record.

Before whom taken in the State—A judge, justice of the peace, notary public, or clerk of any court having a seal in vacation of court, mayor, or chief officer of a city or town having an official seal. If outside the State, before an officer authorized by the laws of this State, or some consul or commercial or representative of the United States, having a seal, or mayor or chief officer of any city, town or borough, having a seal of office, some judge, justice of the peace, or other judicial officer, or by a notary public where the witness resides.

May be taken by an officer outside this State authorized by this State, without any commission or order of court. Notice to be given adverse party or his attorney of record when residents in this State. If non-residents, by posting notice in the office of the justice or of the clerk of the court where suit is pending. Service of notice may be by delivery to him, or by leaving a copy at his abode with some member of his family above fifteen years of age, or at his office, with his clerk, or to any local agent, if a corporation. May be by sheriff, constable, marshal or any competent witness, who shall make affidavit of service. Three days' notice and one day additional for each fifty miles' travel, for the first three hundred miles and beyond that one day for each one hundred miles, to be given. The party commissioned to be named in the commission. Interrogatories to be attached to the commission, drawn and signed by the parties or their counsel under the direction of the judge or court.

Depositions to perpetuate testimony may be taken in the same manner. Fees—Taking deposition, administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c; taking acknowledgments, 25c.

Officer taking may issue subpoenas compelling attendance of witnesses. May commit for refusal to testify. Certificate of officer taking to be appended to the deposition showing that the same was taken in his presence, subscribed and sworn to by the witness, the place, day and hour.

All papers and deposition to be sealed up and directed to the court or justice before whom the case is pending. Depositions in foreign countries to be taken in the language of the witness and be translated into English by the officer taking.

§ 374. **Montana**—In the State, either party can apply for, before a judge or officer authorized to administer oaths. Five days' notice to be given the adverse party and one day for each 25 miles' travel. Either party may attend. The deposition to be read over and signed by the

witness, certified to by the officer, enclosed, sealed and directed and delivered to the court or parties agreed on.

If out of the State, may be taken any time after issue of summons or the defendant's appearance. If a special proceeding, any time after a question of fact has arisen. In the State, it may be taken as above, when the witness is a party in the action, or an officer or member of a corporation which is a party in the action, or a person whose interest the action will benefit. When the witness resides out of the county, or about to leave the county, or is infirm. When the testimony is required upon a motion, or any case where the oral testimony is not required. When the witness is the only one who can establish facts material to the issue; provided the deposition will not be used if his presence can be procured.

May be taken out of the State upon commission issued from the court, under its seal, upon an order of the court, or its judge, on the application of either party, upon five days' notice to the other. If within the United States, it may be directed to any person agreed upon by the parties, or to any judge, justice of the peace, or commissioner selected by the court or judge. If to any foreign country, it may be directed to a minister, ambassador, consul, vice consul, or consular agent of the United States in such country, or to any person agreed upon by the parties. Interrogatories may be prepared by the parties or officer granting the order for the commission, a day fixed in the order may be annexed to the commission; or, when the parties agree the examination may be without written interrogatories. The commission must authorize to administer an oath to the witness before interrogating, to certify the deposition, to enclose and direct same to the court or person agreed upon, and forward it.

To perpetuate testimony, applicant to petition a judge of the District Court on oath, and give the adverse parties' names. The names of witnesses, and any other necessary matter. The judge will make an order, naming the officer to take, prescribing notice. If out of the State the examination to be by question and answer and by commission, interrogatories to be settled as in other depositions. When complete, read and returned as in other depositions.

§ 375. **Nebraska**—May be used only when witness is not a resident of the county or where tried; when witness is infirm, aged, imprisoned, dead or unable to attend court; when the testimony is required upon a motion, or any case where oral testimony is not required. Either party may commence taking testimony at any time after service upon the defendant.

Who may take—In this State a judge or clerk of the Supreme or District Court, a probate judge, justice of the peace, notary, mayor, or chief magistrate of any city or town incorporated, master commissioner, special commission. Officer's authority must be derived within the State. Who may take out of the State—A judge, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, State commissioner of deeds, or a special commission. Officer taking must be disinterested, no rela-

tive or attorney. Any court of record of this State, or its judge can commission to take in or out of the State. The person commissioned must be named therein, the seal of the court attached and it must be taken upon written interrogatories unless otherwise agreed. Written notice to be given the adverse party, or his attorney, specifying the action, time and place (unless taken under a special commission) sufficient time allowed by the usual route of travel and one day for preparation, exclusive of Sundays and day of service and examination, if the notice so states, adjournment may be had from day to day. Notice to state the names of witnesses. If taken out of the State or fifty miles distant from the place of trial, the adverse party may serve cross-interrogatories within forty-eight hours to the party taking, who shall transmit them to the officer. When the adverse party is absent or a non-resident and has no agent or attorney, he may be notified by publishing three consecutive weeks in a paper of such county of general circulation, notice to continue same as if written. The deposition to be written in the presence of the officer, subscribed to by the witness; when complete, to be sealed up, title of cause, name of officer indorsed thereon, addressed and transmitted to the clerk of the court. Officer taking shall certify that the witness was first sworn to tell the truth, the whole truth and nothing but the truth. That the taking was reduced to writing by (naming party) that it was written and subscribed in the presence of the officer certifying. That it was taken at the time and place specified in the notice. It must be filed in court, at least one day before trial. Fees allowed in the State—Swearing each witness, 5c; each subpoena, attachment or commitment, 50c; each 100 words in deposition and certificate, 10c. Officer may retain deposition until his fees are paid, also if so directed by the persons entitled, he may retain for sheriff and witness fees until paid.

§ 376. **Nevada**—May be taken any time after service of the summons or appearance. In special proceedings, after a question of fact has arisen. When the witness is a party, or a person for whose benefit the action is prosecuted or defended; resides out of the county, is about to leave the county, to be absent when required; is infirm, or resides fifty miles from the trial.

May be taken before any judge, clerk or a court, justice of the peace or notary in this State; notice to be given the adverse party of time, place, and a copy of an affidavit showing the case is one mentioned as above. Forty days after the service of summons by publication and any time thereafter, when the defendant has not appeared, and his residence is unknown, notice may be served upon the clerk of the court where the action is pending, at least five days, and in addition one day for every 25 miles the party served shall have to travel, unless for cause shown the judge, by order, prescribed a shorter time. Either party may attend and properly question. When completed it shall be read to the witness, corrected and subscribed to by him, certified to by the officer, enclosed, sealed and directed to the clerk of the court or to such person as the parties may agree to in writing, and delivered by mail or personally.

Out of the State shall be taken upon a commission issued from the court, under its seal, on the application of either party, upon five days' previous notice to the other, to a person agreed upon by the parties. If they do not agree, then to any judge or justice of the peace selected by the officer, or to a commissioner appointed by the governor to take affidavits and depositions in other States. The interrogatories to be agreed upon by the parties or if they disagree, by the officer granting the order, time and place may be annexed to the commission. The commissioner shall authorize the commissioner to administer an oath to the witness and then take the deposition, to certify it to the court, sealed and directed to its clerk or other parties as agreed, to be forwarded by mail or in person.

Depositions to perpetuate testimony, may be done in the same manner, by application to the district judge, by petition on oath.

**§ 377. New Hampshire**—Any justice or notary may issue writs for witnesses to appear before himself or other justices or notary to give lawful depositions. A person may be summoned to testify or give deposition, by reading to him the writ and tendering the fees for travel to and from the place desired and for one day's attendance. If the party fail to appear, to testify, or depose; without reasonable excuse, subject to liability to the party injured, for damages sustained thereby. Every court, justice or notary before whom summoned may bring such party by attachment, and fine him, not exceeding ten dollars if imposed by a justice or notary or police court, and not exceeding fifty dollars, if imposed by any other court, and add costs. Depositions shall be sealed up by the officer directed to the court or justice where they are to be used.

The party instituting shall give written notice to adverse party, signed by a justice or notary, of the day, hour and place of taking, to be left at his abode if resident of the State, and within twenty miles of the place of taking, or of the party taking, a reasonable time before. If the adverse party resides out of the State or twenty miles from the place or from the party requesting the taking, notice may be given his agent or attorney. No person shall be deemed an agent or attorney unless he has indorsed the writ or has appeared as such or given notice in writing. No person shall write the testimony who would be disqualified to act as juror at the trial, except exemption as a juror. Witness to subscribe to the deposition and make oath to the truth of same. The magistrate shall certify it, with time and place of taking, stating whether the adverse party was present or was notified or did not object. A copy of the notice sent to the adverse party, with the return or affidavit of officer leaving it, shall be annexed to the deposition when the adverse party fails to attend. Deposition to be filed within ten days after taking with the clerk of the court where case is pending.

Any justice or notary in the State, any commissioner appointed under the laws of the State to take depositions in other States, any judge, justice, or notary in any other State or country, may take depositions. Any judge of the Superior Court may appoint a commissioner to take outside the State for civil causes in his court, who shall have full

power to act according to the laws of the State or country where the taking is done.

§ 378. **New Jersey**—May be taken in this State when the witness is aged, infirm, sick, or is about to go out of the State; may be taken *de bene esse* before a justice of the Supreme Court, or judge of the Common Pleas Court, Supreme Court commissioner, master in chancery. The officer taking to give the adverse party immediate notice or at such short day as the case requires. Witness may be compelled to appear and testify and be allowed compensation. Witness to be first sworn to the truth. The testimony to be in writing, subscribed to by the witness in the presence of the officer taking it, and with certificate of reasons for taking, and the notice to be delivered by the officer with his own hand to the judge or clerk of the court, or it may be sealed up, directed and transmitted by mail or private messenger, who shall open and file it as a record.

Of witnesses out of the State. The judge of any court where cause is pending or during vacation, on affidavit, to issue a commission under the seal of the court, to such person or persons as the court or judge may think fit, to examine *de bene esse* the witness on oath or affirmation. Names of witnesses to be in the commission, the interrogatories to be drawn and signed by the parties or their attorneys, with the court or judge's approval, each being allowed to insert such questions as deemed proper, the same to be annexed to the commission.

The deposition may be taken by commission or upon notice of any party to a suit, residing out of this State.

Depositions out of this State may be taken *de bene esse* before any judge of any supreme, circuit, district or common pleas court or before a commissioner of deeds for this State where witness resides, or before a special commissioner appointed by the court; provided notice be given adverse party or his attorney, that they may be present, time being allowed for travel (one day for every fifty miles) in all cases, ten days, exclusive of Sundays, or if in a foreign country or a Pacific Ocean State the court shall direct the time or any judge thereof in chambers. The officer taking shall take oath to fairly and impartially take the testimony before a party authorized to take oaths in his State or country.

§ 379. **New Mexico**—May be taken to be used in any court of this territory when the witness is sick or absent from the territory, or it is impossible to be present. IN THE TERRITORY it may be taken before any judge or justice of the peace, court clerk, county probate judge, or his clerk, or any notary of the county where witness resides. The party desiring the taking shall first notify the adverse party five days before if he resides less than eight leagues from the place of taking and one day in addition for each eight leagues that the adverse party may reside away. Notice may be served by the sheriff, constable, or by himself, or by anyone for him. The notice shall state the time and place; may be by four weeks' publication.

It may be taken on commission. Either party may apply to court, serve five days' notice on adverse party, allow one day for each twenty miles of travel, stating the day he will make application. Either party

may take out the commission. The clerk may appoint either a district judge, chief judge of the county, a commissioner of deeds, notary or two justices of the peace.

**IN OTHER STATES**—Before any clerk of a court of record having a seal, any notary, any commissioner of deeds, where witness resides. **IF TAKEN ABROAD**—Any notary, United States Minister, charge d'affaires, consul, vice-consul, consul-general, consular or commercial agent.

When taken, to be enclosed and sealed by the officer before whom taken, and by him delivered to the court, or its clerk, where the case is being tried.

Officer's certificate must show that the witness was sworn to the truth of his answers at the time that his signature was appended. Officer may adjourn or postpone taking as necessary, at cost of party taking. Officer may subpoena witness. Deposition may be taken ex parte if parties interested fail to attend after notice. Clerk of the court shall notify the parties in the case on the return of the deposition and they have ten days to offer objections to it.

Depositions may be taken to perpetuate testimony.

§ 380. **New York**—Depositions taken in this State for use in this State may be taken before the judge of the court or a referee on filing an affidavit with the court showing necessity. Time allowed for service, five to twenty days. Taken out of the State for use in this State, by a commission of one or more persons, or a chancellor, or judge of a court of record, mayor or chief magistrate of a city, a justice of the peace. Officer must have no interest in the parties or the case. Witness to be sworn to the truth, etc. The examination must be reduced to writing by a disinterested party. Officer must subscribe his name to each half sheet, enclose same in an envelope with all papers and exhibits and the commission, also his certificate, seal up same under his official seal, direct it to the clerk of the court, and immediately mail it, postage prepaid unless otherwise directed in his commission. All exhibits and papers to be signed by the parties presenting them, and also by the officer.

§ 381. **North Carolina**—Any party in a civil action or special proceedings may take the deposition of persons whose evidence he may desire, without any special order, unless the witness is outside the United States. Written notice must be served on the adverse party or his attorney. If adverse party resides within ten miles of the place of the taking, three days' notice. Allow one day more for each additional twenty miles, unless it is to be taken within ten miles of a railway in running order, when one day only shall be given for every hundred miles of railway to the place of taking. If beyond the State, ten days' notice to be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases when there are no railways, twenty days' notice.

Objection to the reading of the deposition, on account of insufficient notice, must be proved. Depositions shall be taken on commission, issuing from the court and under its seal, by one or more commission-

ers not of kin to either party, appointed by the clerk, subscribed to and sealed up by the officers and returned to the court, the clerk to open and pass upon them, first giving the parties or their attorneys not less than one day's notice. When passed upon by the clerk, without appeal, or by the judge upon appeal from the clerk's order, shall be deemed legal evidence, if the witness is competent. Commissioners can compel attendance to testify under penalty. Sheriff to serve the subpoena and make return. The witness to be first sworn. If the witness be summoned on five days' time and fail to appear before a commissioner acting under authority from courts of another State he shall forfeit and pay to the party at whose instance he was summoned fifty dollars, and on the trial for such penalty the summons and return shall be prima facie evidence to entitle the plaintiff to judgment. If the defaulting witness was to appear before a commission issued by a court of this State the fine shall be forty dollars, but execution shall not issue until the same be ordered by the court giving witness time to show cause.

§ 382. **North Dakota**—Who may take in the State—A judge or clerk of the Supreme or District Court, a justice of the peace, notary public, United States Circuit or District Court commissioner or any specially empowered commission.

Out of the State, a judge, justice or chancellor, or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the Governor of this State, or any specially empowered commission by any court of this State. Officer taking must not be a relative or interested. Any court of record, or its judge, of this State can grant a commission within or without the State, upon the application of either party, upon five days' notice to the other. It must be issued to a person or persons therein named by the clerk under the seal of the court; must be taken upon written interrogatories, direct and cross, as attached to the commission by the clerk. Unless the parties agree to the interrogatories the court or judge to settle it upon five days' notice. The officer taking shall certify under his signature that the witness was first sworn to testify the truth, the whole truth and nothing but the truth, was reduced to writing by (naming him), was written and subscribed to in the presence of the officer, and was taken at the time and place specified in the notice. When offered in court it must be shown to the satisfaction of the court why the witness cannot be present. The deposition to be filed in court at least one day before trial. When taken must be sealed up, the title of the cause endorsed on the back, with the name of the officer, and addressed to the clerk of the court, there to remain under seal until opened by order of the court or at the request of a party to the action, or his attorney. A deposition is deemed the evidence of the party reading it, and may be read at any stage of the proceeding. The deposition must be authenticated by the seal of office of the party taking it; if they have no official seal then it must be authenticated by some state officer having a seal,

together with the officer's certificate. If taken by a special commissioner his signature is sufficient.

§ 383. **Ohio**—The deposition of a witness may be used only when he is not a resident or is absent from the county where the proceeding is pending. When he is dead, or from age, infirmity or imprisonment is unable to attend court. When the testimony is required upon a motion, or where the oral examination of the witness is not required. Either party may commence taking testimony by deposition at any time after service upon the defendant. Testimony taken in an action on the order of a court, by a referee, master commissioner, or special master commissioner, subscribed by the witness and reported to the court by the officer may be used as a deposition taken in the case. When the testimony is required in an action pending without this State. Depositions may be taken in this State before a judge or clerk of the Supreme, Circuit or Common Pleas Court, or a probate judge, justice of the peace, notary public, mayor, master commissioner, official stenographer of any court in the State, or any person empowered by special commission; but depositions taken in this State to be used therein must be taken by an officer or person whose authority is derived within the State, and if to be used out of the State they may be taken before a commissioner or officer who derives his authority from the State, district or territory in which they are to be used. They may be taken out of the State before any judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the Governor of this State to take depositions, or any person authorized by a special commission from this State. The officer must not be a relative or attorney of either party, or interested. Any court of record of this State, or judge thereof, may grant a commission to take depositions within or without the State. It must be issued by the clerk and under the seal of the court. Persons to whom granted must be named. It must be taken on written interrogatories, unless parties otherwise agree. Written notice to be given adverse party, his agent or attorney, unless taken under special commission, action to be specified, the name of the court where used, time and place of taking, and if the deposition of a party to the suit be taken, it shall not be used in his own behalf unless so specified in the notice. The deposition to be used only against such parties as are served with notice in one of the modes prescribed, sufficient time to be allowed the adverse party, exclusive of Sundays, the day of service, and one day for preparation, to travel by the usual routes and conveyances; the examination may adjourn from day to day, if so stated in the notice. If the adverse party is absent or a non-resident of the State, and has no agent or attorney of record therein he may be notified by publication for three consecutive weeks in the county newspaper where the action is pending; if no paper is printed there, then in one of general circulation in the county, printed in the State, the publication to contain all that is required in a written notice and proved by affidavit. The deposition to be written in the presence of the officer before whom taken, either

by the officer, the witness, or some disinterested person, and subscribed by the witness.

It shall be sealed in an envelope indorsed with the title of the cause, the name of the officer taking it and by him addressed and transmitted to the clerk of the court, there to remain unopened, until so ordered by the court, or at the request of a party to the action or his attorney.

Depositions may be admitted as evidence in a civil action pending before a justice of the peace, mayor or other judicial officer of a municipal corporation, or before arbitrators, a referee or a master. A deposition may be read in any stage of the action or in any other action upon the same matter between the same parties subject to exceptions mentioned. If taken by a judicial or other officer having a seal of office, whether resident in the State or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal. No other authentication is required. If the officer has no official seal and the deposition was not taken in this State, it shall be certified and signed by the officer and further authenticated, either by parol proof in court, or by the certificate and seal of the secretary or other officer of State who is the custodian of the great seal of the State, or the certificate and official seal of the clerk or prothonotary of any court of the State where taken, attesting that such officer was, at the time of taking, authorized to take. If the deposition is taken in this State by an officer not having a seal, or within or without the State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commission before whom taken; and when a deposition is not certified according to law, the fact neglected to be certified may be shown by parol proof. The officer's certificate shall show: that the witness was first sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him, that the deposition was written and subscribed in the presence of the officers certifying thereto, that the deposition was taken at the time and place specified in the notice. But if the deposition be taken out of the State, by an officer authorized, the certificate may be in the foregoing form, or in the form authorized by the laws of the place where taken; and in the latter case the certificate shall be deemed *prima facie*, as made in accordance with the laws of the place where made. Notaries public have power to compel the attendance of witnesses and to punish for contempt when taking depositions. Exceptions to depositions shall be in writing and specify the grounds of objections, and be filed with the papers in the cause. No exceptions other than for incompetency or irrelevancy shall be regarded unless made and filed before the commencement of the trial; the court shall decide these before trial. Errors of the court in its decisions upon exceptions are waived unless excepted to. The deposition must be filed in court at least one day before the trial. Fees for taking depositions in this State: Swearing each witness, 4c.; each subpoena attachment or commitment, 50c.; each one hundred words in the deposition and certificate, 10c. The officer shall

retain the depositions until paid for; he shall also tax the costs of sheriff or other officers serving process and fees of witnesses; he may if directed by a person entitled thereto, retain the depositions until his fees are paid.

§ 384. **Oklahoma**—May be used when the witness does not reside in the county or is absent. When attendance is prevented from age, infirmity, imprisonment or death. When testimony is required upon a motion, or in any case where the oral testimony is not required. Either party may commence taking testimony after service of notice.

Who may take in the Territory, a judge or clerk of a court of record, a county clerk, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or a master commissioner or special commission. Authority must be derived within the territory.

Out of the Territory, a judge, justice or chancellor, of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor to take depositions, or any person authorized by a special commission from this territory. The officer must not be interested in the case nor related to either party. Any court of record of the territory or any judge thereof can grant a commission to take. The commission, name of the officer who takes, must be under the seal of the court. Deposition must be upon written interrogatories, unless parties agree otherwise. Unless by special commission, written notice to be given the adverse party, specifying action, court, time and place, allowing time for travel and one day for preparation, exclusive of Sunday and day of service. May adjourn from day to day, if notice so states. When adverse party is absent, or a non-resident, and has no representative in the Territory, three consecutive weeks' publication in a county paper is required. The deposition must be written in the presence of the officer, either by him, the witness or a disinterested person, signed by the witness, sealed up, and endorsed with the title of the case, name of the officer, certified to by him, addressed and transmitted to the clerk of the court, and remain under seal until opened by order of court. The officer's certificate must state the above facts and that the witness was first sworn to the truth, the whole truth and nothing but the truth; it must be filed in court one day before trial.

Fees allowed: Swearing each witness, 10c.; each subpoena, attachment or order of commitment, 50c.; each 100 words, including certificate, 15c. Deposition may be retained until fees are paid.

§ 385. **Oregon**—May be taken in or out of the State in an action at law, any time after the service of summons or the appearance of the defendant, and in special proceedings any time after a question of fact has arisen. In this State, when, the witness' residence is such that he is not obliged to attend on a subpoena, is a party to the action, is about to leave the county and go more than twenty miles from place of trial, is infirm, when the testimony is required upon a motion, or where the oral examination is not required.

Without the State, may be taken upon commission issued by the court, or without a commission by the commission appointed by the

governor of this State to take depositions in other States or counties. The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it. Interrogatories, direct and cross, as the parties may prepare, or the clerk or justice, may be annexed to the commission, or if the parties agree, without written interrogatories. Commission shall authorize the commissioner to administer an oath to the witness, to take deposition as per interrogatories, or in respect to the question in dispute, to certify to the court in a sealed envelope directed to the clerk or justice issuing same, or other person designated, and forwarded to him by mail, or other channel. In any other State it may be taken before a commissioner appointed by the governor of this State for that purpose upon giving the adverse party eight days' notice of the time and place, name of the commissioner and the witness. If the distance of the place of examination, from the place where the testimony is to be used, does not exceed fifty miles, and one additional day for every additional twenty-five miles. Either party may attend, and examine the witnesses upon oral interrogatories, but if either party by written notice to the other, within three days from the service of the original notice, require it, it shall be taken or written interrogatories to be settled, if not agreed upon, by the same officer and in the same manner as in case of deposition upon commission and in such case the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

May be taken in this State before the clerk of a court of record or other person authorized to administer oaths, three days' notice to be given the adverse party if not over 25 miles, and one day additional for every twenty-five miles, unless the courts direct otherwise. Either party may attend and examine. Deposition to be written by the officer, or by the witness or some disinterested person in his presence. When completed it shall be read to or by the witness and subscribed by him. Officer to certify the above was done (under his official seal, if he have one), and at a place mentioned, between certain hours of a day or days mentioned, and that the witness was first sworn to the truth, the whole truth and nothing but the truth. Same to be enclosed in a sealed envelope, directed to the clerk of the court or the justice of the peace where action is pending, and forward by mail or the usual channel. It may be used by either party, at any time. The testimony of a witness may be taken conditionally and perpetuated in the usual manner.

§ 386. Pennsylvania—Upon the affidavit of either party or their agent, that the testimony of any material witness is wanted, who resides out of the county, or from infirmity, or other causes, cannot be obtained personally, a cause shall be postponed to a certain day, within such reasonable time as the distance of the witness, the season of the year and the circumstances of the roads may render it proper, to

obtain the deposition of the witness wanted; and whenever a cause is postponed at the instance of the defendant, he shall enter into a recognizance for a sum sufficient to cover the demand in question together with the costs, with one sufficient surety (for his appearance on the day fixed), and whenever a rule for taking the deposition of a witness or witnesses shall be applied for, as aforesaid, the party so applying shall file a copy of the interrogatories or questions intended to be asked the witnesses; and a copy of the same shall be delivered to the opposite party or his agent, who may also file such additional questions as he may think proper; Provided, it be done within four days after receipt of the copy; which rule and interrogatories being certified by the justice before whom the cause is depending, shall be sufficient authority for the justice who may be named in said rule, to take the answers of such witnesses as may be named therein; but where the witnesses reside in the county, or in cases where the parties or their agents agree to enter a rule to take depositions, it may be done without filing interrogatories, upon notice given, agreeably to the rule, of the time and place appointed for the examination. Testimony so taken shall be read in evidence on the trial before the justice or referee. Either party may obtain testimony out of the State for causes pending before a justice of the peace in the same manner. When not convenient to take before a justice of the peace, a commissioner may be appointed, at the suggestion of the party or parties, who on receipt of his commission, with a copy of the rule and interrogatories, certified by the alderman or justice of the peace, shall have authority to administer oaths and take the answers of the witnesses named. Same shall be as good as if taken before a justice of the peace.

A court of common pleas on receipt of letters rogatory from any court in the United States, may compel the attendance of witnesses, penalties to be attached, and a fine not exceeding one hundred dollars imposed. Examiners or commissioners may on request appoint a stenographer; court to direct compensation together with such reasonable additional amount as the examiner may suggest, including traveling and hotel expenses and extra services.

§ 387. **Philippine Islands**—Depositions out of the Philippine Islands may be taken by a commission issued by the court under its seal upon five days' notice to the adverse party. If the court be that of a justice of the peace the commission shall have attached to it a certificate under seal, by the clerk of the court of first instance of the province in which the court is held, to the effect that the person issuing the same was an active justice of the peace at the time. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or to any justice of the peace, any Federal or State judge, to any commissioner so authorized to take. If issued OUT OF THE UNITED STATES, to any minister, ambassador, consul, vice consul or consular agent of the United States or to any person agreed upon by the parties.

Interrogatories may be attached to the commission. Witness to be

sworn, the deposition to be certified to the court in a sealed envelope directed to the clerk or person designated and forwarded to him.

IN THE ISLANDS taken before any judge, justice of the peace or notary public on serving the adverse party two days' notice with an affidavit showing that the case is within Sec. 355 of the statutes. Reasonable time must be given the adverse party to be present.

Either party may attend and put such questions direct and cross as may be proper. Deposition must be read to the witness and corrected by him if desired; he must subscribe to it and the officer certify to it, seal in a wrapper, direct and deliver it to the clerk of the court or to such person as the parties agree on in writing. The deposition must be written by the officer or in his presence and under his direction by a disinterested person. May be taken stenographically.

§ 388. **Rhode Island**—Except in equity causes, any justice of the Supreme Court, justice of the peace, or notary public, may take depositions of any witness to be used in the trial of a civil suit where he is a disinterested party and commenced or pending in this State or any other State or country, the adverse party or his attorney to be notified as to time and place, before the taking. If his residence or his attorney be unknown the justice shall prescribe the method of notice. The notification shall be issued to a disinterested party by the commissioner at least twenty-four hours, exclusive of Sundays and holidays, before the taking. It shall be read to the party, if found, otherwise, a copy to be left at his usual abode; manner and time of service to be returned and sworn to before some officer authorized to take oaths. Any person may be compelled to appear and depose within this State.

The supreme, probate or district court may, on motion of either party in an action pending therein, grant a commission to take depositions. May be taken in this State to be used in any other State or country, before any person residing in this State to whom a commission shall be directed. Taken out of the State to be used in this State, may be obtained on an order from the trial court, and taken according to the law of such State or country, or if within the United States, it shall be taken before a commissioner appointed by the governor of this State, or a judge, chancellor, justice of the peace, notary public, or civil magistrate of such State. If taken out of the United States, before a resident United States official or if the deponent be in the military or naval service of the United States, before a colonel, lieutenant-colonel or major in the army, or before any officer in the navy not below the grade and rank of lieutenant-commander. The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, and after giving testimony, shall subscribe to it in the presence of the officer taking it. The deposition may be reduced to writing by the officer or by any one under his direction and in his presence, or taken in shorthand and a transcript made in long hand, typewriting, print or other reproduction sworn to by the person reporting it, and signed by the deponent. The signature in the latter case, to be attested by the officer. The deposition to be delivered by the officer's own hand to the court, or shall, together with a certificate of its having been

taken, be by the officer sealed up and directed to the court, and delivered to its clerk.

For depositions in perpetual memory, the same methods are employed as in other depositions. The officer taking has the same power and authority as magistrates in acting. They can compel attendance and testimony. If party entitled to notice resides outside the State he may be served by any disinterested person. After taking, it shall be sealed up, with the petition, and directed to the clerk of the common pleas division of the supreme court in the county in which some one of the parties notified of the taking reside; if they reside outside of the State, then in the county in which the person preferring the petition resides; in case both parties reside outside the State, then in Providence county. The clerk, on its receipt, sealed and addressed, shall open and record it, on payment of the legal fees, noting on same the time received, page of the book where recorded, and return it to the party. If not recorded, it cannot be received as evidence in any court in this State, unless it is opened in the Court at the time of the hearing of the cause in which it is used.

§ 389. **South Carolina**—Any judge or clerk of the circuit court has power to grant commissions, under the seal of the court, directed to two or more commissioners, to take the depositions in writing of the witness or witnesses therein mentioned. Where the witness resides without the State or county, or at a greater distance than one hundred miles from the court, or is about to go without the limits of the State before the next term of court or before trial, or when their presence cannot be procured by attendance on some public official or professional duty as an attorney at such time, or by reason of sickness or infirmity. Ten days' notice to be given the adverse party with copy of interrogatories propounded. The application must be accompanied with an affidavit showing the necessity for the taking.

Either party may, in the court's discretion, on motion, and a showing that two days' notice has been given the adverse party or his attorney, be entitled to a rule to compel the attendance of any witness residing in the county, or not more than thirty miles from the court. The testimony of an officer in a lunatic asylum may be taken by commission. Subpoenas may issue for witnesses to attend before the commission at a certain time and place not more than fifteen miles from his residence and answer on oath according to their knowledge the interrogatories and cross-interrogatories annexed to the commission.

Persons unable to leave home by reason of sickness, age or infirmity shall be attended by the commissioners, and in case of their refusal to give evidence or answer the interrogatories, etc., they shall be liable for damages to the party injured. Clerks of the court of common pleas may take depositions, ten days' notice having been given the adverse party. All privileges and powers allowed as before the court. Clerk's fee for each witness, one dollar.

Depositions *de bene esse* may be taken in civil actions depending in the court of common pleas where the witness lives outside the county or more than one hundred miles from court, or is bound for sea, going

out of the State or county, or is aged or infirm. Same may be taken before any circuit court, judge or clerk, any trial justice, notary public of this State, chancellor, justice or judge of a superior or supreme court, mayor or chief magistrate of a city, trial justice, judge of a county court or court of common pleas or any of the United States or Dominion of Canada or Kingdom of Great Britain, or any notary public not being of counsel or attorney. Notice of ten days must first be given in writing by the party or his attorney to the adverse party, with notice of time and place. If impracticable, the judge of any circuit court shall determine how notice to be given. Manner of taking—Witness to be sworn to testify the whole truth. Testimony to be reduced to writing by the officer or by the witness in officer's presence and by no other person, to be subscribed to by the witness, delivered into the court by the hand of the officer, or with a certificate of reasons for taking, and the notice given adverse party, be sealed up and directed to the court by the officer and forwarded by mail or express. If witness is able to appear at the trial the deposition shall not be used. Contempt of Court—An attachment may issue from any circuit court for failure of the witness to answer the subpoena for attendance. Commissions issued out of any United States or other State courts for the examination of witnesses in this State, produced to a judge of the supreme or circuit courts of this State, shall have the same consideration as if issued by a court of this State and subpoena issued, with same fees and contempt proceedings as allowed in this State. Two days' time to be allowed the witness before attendance is required. He is entitled to same fees for each day's attendance as allowed in civil cases, with necessary ferriages going to and coming from. To be paid by the party requiring the deposition. Commissioners are authorized to retain the deposition until same is paid.

§ 390. **South Dakota**—May be taken in this State by a judge or clerk of the supreme or district court, a justice of the peace, notary, U. S. circuit or district court commissioner or any person empowered by a special commission.

Outside the State by judge, justice or chancellor or clerk of any court of record, justice of the peace, notary, mayor or chief magistrate of a city or town corporate, a commissioner appointed by the Governor of this State, or any special commission. Officer must not be a relative or attorney of either party or interested in the action. Any judge or clerk of a court of record of this State can appoint a commission to take, under seal of court. Witnesses—Notary can issue subpoena for. For failure to attend the notary can issue attachment. Notice to be given to adverse party allowing six days' preparation exclusive of Sunday and day of service for their attendance. If a non-resident it may be by publication for three weeks in county newspaper. Deposition when taken must be written by the officer, or in his presence by the witness, or some disinterested person, must be subscribed to by the witness, sealed up, endorsed with the title of the case, name of the officer taking, addressed and transmitted to the clerk of the court where action is pending, to be filed at least one day before trial. Officer must

state in his certificate that the witness was first sworn to tell the truth, the whole truth and nothing but the truth. That the deposition was reduced to writing by some proper person, naming him. That the deposition was written and subscribed in his presence, giving the time, date and place specified in the notice.

§ 391. **Tennessee**—May be taken when the witness, from age, infirmity or other cause, is incapable of attending at the trial or resides out of the State, or residing in another county of the State, in which case the adverse party may have him subpoenaed. When leaving the State, or is the only witness to a material fact, or an officer of the United States, the State, or the county, or clerk of another court of record, a member of the legislature in session, clerk or officer thereof, a practicing physician or attorney, a jailer or keeper of a public prison in another county. When he is a notary public, whether a suit be pending or not; to be evidence between the same parties in any suit then, or thereafter depending, should the notary die or remove out of the State before the trial. When the suit is brought in *forma pauperis*. The deposition of any person residing in the county may be taken by either party, but the opposite party may summon the witness, in which case he shall be examined as if summoned by the party taking the deposition. It may be taken any time after action brought, upon such notice as the court or justice may order, or upon giving the usual notice. Party exempt from attending, must claim at the time; he may claim exemption by application to the court. The adverse party may compel the attendance in court, of the deponent, unless witness is exempt by law.

Witness may be cross-examined by any court or justice of the peace before whom an action is pending, may make orders and issue commissions to take depositions, upon application of either party. The clerk or his deputy may act in like manner. Court or justice may prescribe notice. Parties may take without a commission, upon giving opposite party notice of time and place or by filing interrogatories.

May be taken in this State for use in any other State, or foreign government. Attendance of witnesses may be compelled, by application to any judge of the superior courts of the State, or to any justice of the peace of the county. Witness to have two days to prepare and not obliged to leave the county. Service and return of the subpoena to be in the usual way and failure of witness to appear subjects him to the penalties of the law. Witness fees to be allowed as in cases in this State. Time of notice, five days. If out of the county, for 50 miles or less, 5 days; 50 to 100, 10 days; between 100 and 250, 15 days; 250 to 400, 20 days. If to be taken in another State west of the Rocky Mountains, such time as the court or clerk may order, not over forty days. In foreign countries, as the court or clerk may order. Service may be made by the sheriff, coroner or constable, with the usual return notice. Service of notice as to time and place may be made on the attorney of a non-resident. If the witnesses reside out of the State or over 150 miles from place of trial either party may take the deposition by filing interrogatories with the clerk, giving opposite party notice,

who shall have ten days to file cross-interrogatories. Officer taking, is vested with all the powers of a court, and to control the conduct of the parties. The officer to swear the witness, the questions to be reduced to writing before being put, and read to the witness, the answers to be written down and then read to or by the witness. When deposition is complete, it shall be enveloped, together with the commission and other documents, sealed, the commissioner's name written across the seal, and directed to the clerk of the court, title of cause indorsed thereon and sent to the clerk of the court. If sent by private conveyance the person delivering must make an affidavit to the clerk, that papers have not been out of his possession or opened since received by him. The court or clerk may determine whether notice shall be given to each person where more than one person is plaintiff or defendant. The clerk shall certify in the deposition how received. The commissioner can subpoena witnesses. Penalty for failure to appear may be enforced by the tribunal having cognizance of the suit as in other cases. Depositions may be taken by any judge, justice of the peace, mayor or chief magistrate of a town or city, the clerk of any court, or any person properly commissioned or appointed by the court or clerk, not being interested, of counsel or related to either party, any notary public, in his county, and his certificate to show the county.

Persons may have testimony perpetuated by petitioning the circuit or chancery court judge, he will fix the time and place. Notice to a non-resident may be given by publication in such paper as the judge directs. The evidence of a notary public may be taken and perpetuated in matters officially done by him, without petition, upon notice to the other side. Deposition of a notary may be taken whether a suit be pending or not, on ten days' notice to the opposite party, if resident in the State, and forty days' notice out of it, to be read as evidence between the parties in any suit then or afterwards depending, should the notary die or remove from the State before the trial.

§ 392. **Texas**—May be taken when the witness is a female, is aged, infirm, sick, or when official duty prevents attendance at court; when witness resides without the State or county, or is about to leave the State or county, and probably cannot be at the trial, or to perpetuate testimony. May be taken when residents or not of the county where suit is pending; provided, the failure to secure same shall not be regarded as want of diligence. The party shall file with the court clerk, or justice of the peace, as may be, a notice of his intention with interrogatories attached. The notice to state name and residence of witness, or where he can be found, and the suit to be used in. A copy of all shall be served on the adverse party, or his attorney of record, five days before the commission issues. If the adverse party is a corporation, or joint stock association, service may be on its president, secretary, treasurer, or local agent in the county where the suit is, or by leaving it at the principal office of such corporation during office hours.

On an affidavit, that either party is beyond the jurisdiction of the court, or cannot be found, or that he has no attorney of record, or his claimants have not become parties to the suit, and are unknown; by the

party wishing the deposition, the clerk or justice of the peace shall cause a notice to be published in some newspaper for thirty days, stating the number of the suit, names of original parties, the court where pending, name and residence of witnesses, that a commission will issue on or after the thirtieth day.

The style of the commission shall be, "The State of Texas;" it shall be dated and tested as other process; addressed to the officer authorizing and requiring him to summon the witness before him forthwith, to take his answers under oath to the direct and cross-interrogatories, if any, a copy shall be attached to the commission, and to return without delay the commission and interrogatories and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and postoffice address. Cross-interrogatories may be filed by either party before commission issues.

Who may take in the State—Any clerk of the district court, any judge or clerk of the county court or any notary public of the county. In any other State, a clerk of a court of record having a seal, a notary, or commissioner of deeds in that State appointed by the governor of this State. In foreign countries; a United States minister, commissioner, charge d'affaires, consul general, consul, vice-consul, commercial agent, vice commercial agent, deputy consul, or consular agent resident in such country, or any notary public in that country. If witness fails to appear he shall be subpoenaed through the sheriff or constable of the county. Attachment, fine and imprisonment may follow. The answers shall be written, sworn to and signed by the witness. The officer shall certify that they were so taken before him, and seal it in an envelope with the commission and interrogatories, etc., write his name across the seal, indorse on the envelope the names of the parties to the suit and the witnesses, direct it to the clerk of the court or justice from whom issued. An interpreter may be summoned and sworn by the officer. Return may be made by mail, the party interested or other parties. The postmaster or his deputy shall indorse their receipt upon them, the clerk or justice likewise. If sent other than by mail, party shall make affidavit before the clerk or justice, that he received them from the officer and that they have not been out of his possession nor undergone any alteration. It may be opened by the clerk or justice at the request of either party or counsel; he shall indorse upon them the date and at whose request they were opened, signing his name; they shall remain on file for either party's inspection. When cross-interrogatories have been filed and answered, either party has the right to use the deposition. When the deposition has been filed in court one day before trial any objections to them shall be in writing and notice given to opposite counsel. They shall be read, subject to legal exceptions. Surplusage may be stricken out by the court upon objections thereto.

Deposition to perpetuate testimony may be made through the proper county court, after the same manner.

§ 393. **Utah**—The testimony of a witness out of this State may be taken by deposition at any time after the service of the summons, or the

appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen. May be taken in this State when the witness is a party to the action, or a person for whose immediate benefit the action is. When he resides out of the county in which his testimony is to be used; when he is about to leave the county where action is, and will probably be absent when required; when infirm, or his testimony is required on a motion, or in any other case where the oral testimony is not required. If out of the State, for use in the State, may be taken upon a commission issued from the court under its seal, upon an order of the judge, or court, or justice of the peace under his hand in any case pending before either of such courts; on the application of either party, upon five days' notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or, if they do not agree, to any judge or notary public, or person named or commissioned by the officers issuing it. If issued to any country out of the United States, it may be directed to a United States minister, ambassador, consul, vice consul or consular agent in the country, or to any person agreed upon by the parties. Parties may prepare their interrogatories, direct and cross; if they disagree, then the officer granting the commission shall prepare, at a day fixed in the order. If the parties agree it may be without written interrogatories.

Depositions for use in other States may be taken where witness resides in this State. If a commission has been issued, by producing same to a district or probate judge here, with satisfactory affidavit as to its necessity, he may subpoena the witness to appear and testify before the commissioner at a specified time and place. If a commission has not been issued, a district or probate judge, or justice of the peace, may on the presentation of a satisfactory affidavit, subpoena the witness to appear before him and testify. The testimony to be taken in writing, certified and transmitted to the court or judge requiring same, as the law of the State requires.

May be taken in this State, before a judge or officer authorized to administer oaths, on at least five days' notice to the adverse party of the time and place of examination, together with a copy of an affidavit showing that the case is within the statute; allowing also one day for every twenty-five miles of distance to the place of examination from the residence of the party, unless, for cause shown, a judge by order prescribes a shorter time, copy of which must then be served with the notice. Either party may attend the examination and put proper questions. The deposition must be read to the witness, corrected if desired, subscribed to by him, certified to by the officer, enclosed in an envelope, sealed and directed to the clerk of the court where action is pending, or to such person as the parties in writing may agree and delivered personally or by mail. It may be used by either party at the trial. Depositions to perpetuate testimony may be taken when required.

**§ 394. Vermont**—Who may take, in the State—Justices, notaries, masters in chancery, judges and registers of probate, shall have the same

powers. Notary need not use his official seal. A resident commissioner of another State may take for use in the State of his appointment.

Out of the State—A judge of the Supreme Court may, in vacation, upon the application of a party in a suit pending in a county court, and on such notice to the adverse party, or his attorney, as the judge thinks reasonable, cause the clerk of his court to issue a commission to a person designated, to take the testimony of a person residing, or without the State; it shall be taken upon interrogatories settled by the order of the judge upon oral examination. May be taken by a justice so authorized by his State and a commissioner appointed by the governor of this State. Depositions of witnesses without this State, taken agreeable to the laws of this State, or of the State or country in which they are taken, shall be allowed in any court. May be taken at any reasonable time after suit is commenced, in whatever court the suit is pending, or while suit is passing from one court to another. The party desiring it shall cause personal notice to issue from the magistrate taking, to the adverse party, or by citation signed by a justice, notary, or master in chancery, served like a writ of summons on the adverse party, or if he resides out of the State, on his attorney, if in the State. Such notice to state the time and place of taking, the name of the magistrate; give reasonable time to be present. A party may, without notice, take a deposition when the adverse party is a non-resident and has no attorney in the State; but such deposition shall be filed in court where the cause is pending, at least twenty days before the trial. A magistrate of competent authority shall issue subpoenas for witnesses at the request of either party. Attachment may issue to compel attendance, and a forfeiture of ten dollars and all just damages paid the party in whose behalf he is summoned. Refusing to depose when fees have been tendered shall cause commitment to jail, until he deposes and pays costs of commitment. Deposition can not be used unless the officer to take has appeared at the place within two hours of the time mentioned in the notice. The deposition subscribed and sworn to by the witness, the authority taking shall certify it, seal it up, and deliver it to the person at whose request it was taken, superscribed, "The within deposition of A. B. was taken and sealed up by C. D. (adding his official designation). No interested person can write the deposition. If returned to the clerk of the court unsealed or with the seal broken, it shall be rejected by the court. The provisions for taking to be used in the courts of this State, shall be applicable to the taking of depositions to be used in courts without this State.

Testimony in perpetuum may be taken on affidavit before a judge of the Supreme or county court.

§ 395. Virginia—May be taken in this State by a justice or notary or a commissioner in chancery and, if certified under his hand, may be received without proof of the signature. If the party resides out of this State, or is out of it in the service thereof, or of the United States, it may be taken before any commissioner appointed by the governor of this State, any justice, notary, or other officer authorized to take depositions in the State where the witness may be, or if in a foreign coun-

try, before any person that the parties may agree upon in writing, or any American minister, plenipotentiary, charge d' affaires, consul general, vice consul, commercial agent appointed by the government of the United States, or any other representative of the United States in a foreign country, or the mayor, or other magistrate of any city, town or corporation in such country or any notary therein. The officer may administer an oath to the witness, take and certify the deposition with his official seal annexed, if he have none, then the genuineness of his signature shall be authenticated by some officer of the State or country, under his official seal, unless the deposition is taken by a justice out of this State, but in the United States, or before some person agreed upon in writing by the parties, in which case it shall be received without any seal or authentication of the signature. If taken before some person agreed upon in writing by the parties other than the officer authorized to take, the said writing must accompany the deposition, or the deposition can not be read. No commission is necessary to take a deposition except for proving a will. Reasonable notice to be given the adverse party of the time and place of taking. The deposition may be used in several suits between the same parties involving the same controversy. Notice may be served on the party's counsel, if the party is a non-resident. The deposition may be retaken without the consent of the court first obtained, if discreet. Depositions may be read in the case when the witness is dead, out of the State or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public service or office, the duties of which prevent his attending the court, or be unable to attend from sickness or infirmity, or be more than a hundred miles from the place of trial. The latter may not excuse, if good cause be shown the court. When completed it shall be certified and returned by the officer taking it, to the clerk of the court where the case is pending or to the person before whom it is to be read. When received, the clerk or other person to whom sent, after endorsing thereon the time it was received, shall file it among the papers of the suit. It may be read by either party. Testimony may be perpetuated by filing with a commissioner in chancery a petition stating the matter.

§ 396. **Washington**—May be taken to be read in evidence in an action when witness resides out of the sub-district (county), more than twenty miles from the place of trial; is about to leave and go more than twenty miles from the place of trial and remain; is sick, infirm, aged and unable to attend trial, or resides out of the state. Either party may commence taking testimony after service of summons upon the defendants. May be taken in this State before a judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public. Notice to be served on the adverse party, his agent or attorney of record, with time to attend by the usual route and three days' preparation, exclusive of day of service and the examination day; notice to state if any adjournment, also to specify the tribunal where it is to be used and the time and place of taking. Officer may compel attendance of witnesses within twenty miles of

his abode, under penalty. Taking out of the State may be by a judge, justice or chancellor or clerk of a court of record, justice of the peace, notary, mayor, chief magistrate of any city or town, or by a special commission from any court of this State. Commission to take in or out of the State may issue from any superior court or judge thereof. The commissioner must be named in the commission by the clerk, under the court seal; deposition must be upon written interrogatories, unless the parties otherwise agree. Before granting, the party applying shall serve notice of application on the adverse party, stating time and place, notice to be served as before stated. The court or judge shall settle the interrogatories the clerk shall attach to the commission. If the adverse party is a non-resident and has no agent or attorney therein, notice may be by three consecutive weeks' publication in the county newspaper. If not printed, then in a State paper circulating generally in the county. It must contain all that is required in the notice and proved by affidavit. Deposition to be written by the officer or by the witness, or some disinterested person, in the presence and under the direction of the officer. It shall be carefully read to or by the witness, corrected and subscribed to by him. If taken up on notice it shall be certified by the officer. The officer to enclose it in an envelope, seal and direct it to the clerk of the court or justice, where case is pending, or as the parties in writing may agree. Delivery by mail or in person. It may be used by either party at the trial. It may be used in any other action in the same cause, between the same parties; provided, it shall have been filed with the court in the meantime. May be used on appeal.

Deposition to perpetuate testimony may be taken on a sworn statement in writing by the party in interest, by filing same in the superior court. If pertaining to land it shall be filed in the county where the land lies; in other cases where the parties reside.

§ 397. **West Virginia**—May be taken in case pending, without a commission in or out of the State, by a justice or notary, commissioner in chancery, or before any officer authorized to take, in the county or State where they may be taken, and if certified under his hand, may be received without proof of the signature. On an affidavit that a witness resides out of the State, or is out of it in the service thereof, or of the United States; his deposition may be taken by or before any commissioner appointed by the governor of this State, or any justice, notary, or officer so authorized to take in the State where the witness may be. If in a foreign country, by or before such commissioner or commissioners agreed on by the parties or appointed by the court, or before any United States American minister, plenipotentiary, charge d'affaires, consul-general, consul, vice-consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, or by or before the mayor or other chief magistrate of any city, town or corporation in such country or any notary public thereof. The person taking, may administer an oath to the witness, take and certify the depositions with his official seal annexed, and if he have none, the genuineness of his signature shall be authenticated by some officer of the same

State or country, under his official seal. Reasonable notice to be given the adverse party of the time and place of the taking; in a suit in equity a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree. In a case at law when taken on such notice it may be read in such case, if when offered the witness be dead, out of the State, or one of its judges, or in any public office or service, the duties of which prevent attending the court, or sickness, infirmity, out of the county where case is pending; the latter on motion to the court before trial, may not excuse. After filing it may be read by either party.

Depositions to perpetuate testimony may be taken on petition to a commissioner in chancery.

§ 398. Wisconsin—May be taken on application to the court or presiding judge; court to determine whether on verbal or written interrogatories; the deponent to be sworn, officer taking to insert every answer or declaration; deposition to be read and subscribed to by the witness, unless waived by counsel and so noted, sealed and delivered to the clerk of the court where matter is pending. In the State may be taken by a justice of the peace, notary, court commissioner or other authorized officer; any time after action begun, notice to adverse party, agent or attorney, giving witnesses' names, officer, time and place. Twenty-four hours' service allowed in same city or town; if elsewhere in the State, two days allowed and one day additional, Sundays excepted, for every fifty miles' travel, after the first ten miles from the place where notice is served, when taken within the State, and time of one day for each three hundred miles from the place where notice is served. When taken without the State, commission may issue from any court of record. The party desiring it may prepare his interrogatories, state the commissioner proposed, name of witness, residence of each, serve a copy on the adverse party; within ten days commission will issue, subject to the objections of adverse party. Before whom taken outside the State—Any judge or justice, court commissioner or master in chancery of any court of record in the United States or State, notary, justice of the peace, commissioner of deeds appointed by the governor of this State, or special commissioner. If for use in a court not of record, not more than thirty days' notice to be given; if for a court of record, ten days' notice to be given. One day's notice shall be sufficient in case of the depositions of additional witnesses desired to be examined, given during the course of the taking of any deposition where the parties on each side appear. In case the officer fail to appear, it may be taken before any other officer authorized by law. But in any action in any court, no notice of the taking need be given to a defendant, who having been served with process fails to appear within the time allowed. May be taken in a foreign country by commission by any judge or clerk of a court of such country, any notary, consul, vice-consul, deputy consul or consul agent of the United States, resident in such country, by any officer authorized by the laws of the United States, or by a commissioner or commissioners, whether otherwise authorized or not,

appointed for that purpose by such commission. When it shall appear to the judge of the court from which the commission issues, that the witness is unable to speak or understand the English language, such judge may appoint a competent and disinterested person to translate the commission, rules, interrogatories, etc. Same shall be sent to the commissioner in place of the original papers, or such as have been translated. Upon the return of the commission and deposition such judge shall in like manner cause the same to be translated into English, and all other proceedings; such transaction shall be filed. The translator shall append his affidavit to the translation, stating that he knows both languages and that he truly translated and that it is correct; the same effect shall be had as if all the proceedings were in English, but the trial court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in such foreign language for the correction of errors, and if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may in discretion continue the cause for the further taking of testimony.

Subpoena may issue compelling attendance of witnesses in this or other states. FEES—Witness, per day, \$1.50; half day, 75c; copying papers, 10c per folio; travel, 4c per mile each way in the State; justice taking 12c per folio. Each party to pay his commissioner and witnesses.

§ 399. **Wyoming**—May be taken in this State before a judge or clerk of the supreme or district court, a justice of the peace, notary public, mayor or chief magistrate of a municipal corporation, or any other person authorized to administer oaths, or any person empowered by a special commission. May be taken out of the State before a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this State to take depositions, or any other person authorized to administer oaths, or any person authorized by a special commission from this State; provided, that when a deposition is taken by an officer not having a seal, his jurat shall be accompanied by a certificate of the clerk of the county in which same is taken, setting forth the fact that the officer is such officer, and that his signature is genuine. Either party may commence taking testimony by deposition after service upon the defendant. Officer taking must not be a relative or interested in the action. Any court of record of the State, or a judge, may grant a commission to take depositions within or without the State, to be issued by the clerk under the seal of the court. The persons to whom issued must be named therein, and deposition must be taken on written interrogatories unless parties otherwise agree. Written notice to be given the adverse party, unless taken under special commission, must specify the action, name of the court where it is to be used, the time and place of taking, and in case the deposition of a party to the suit be taken, it shall not be used in his own behalf, unless the notice so specifies; it shall be served upon the adverse party, his agent or attorney of record, or left at their

usual abode. It shall only be used against such parties as are so served. Sufficient time, exclusive of Sundays, day of service, and one day of preparation, and time for travel, shall be allowed. May be adjourned from day to day if so stated in the notice. Notice by publication may be given when adverse party is a non-resident, and has no agent or attorney of record in the State, the publication must be for three consecutive weeks in a newspaper published in the county; if no newspaper there, then in one published in the State circulating generally in the county; proved by affidavit; deposition to be written in the presence of the officer, by him or the witness or some disinterested person, and subscribed to by the witness. Officers' certificate to show that the witness was sworn to testify the truth, the whole truth, and nothing but the truth. That the deposition was reduced to writing by some proper person, and subscribed to in his presence. That it was taken at the time and place specified in the notice. It shall be sealed in an envelope indorsed with the title of the cause, the name of the officer taking; he shall address and transmit it to the clerk of the court of the action, there to remain unopened subject to the court's orders, or the request of the party to the action, or his attorney. It must be filed in court at least one day before trial. If taken out of this State by an authorized officer it may be taken in this form or in the form authorized where taken; in the latter case the certificate shall be deemed *prima facie*, as made in accordance with the laws of the place where made when it so certifies. Subpoena for witness shall be issued by the officer. A witness shall not be compelled to go out of his county. Depositions may be used only when the witness does not reside in, or is absent from the county where the action is pending; when dead, aged, infirm or imprisoned; when the testimony is required upon a motion, or the oral examination is not required. It may be read in any stage of the action or in any other action upon the same matter, between the parties. A deposition taken by an authorized officer having a seal of office, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other act of authentication is required. If he has no official seal, and is not taken in this State, it shall be certified and signed by the officer and further authenticated, either by parol proof in court or by the certificate and seal of the secretary or other officer of the State who is the custodian of the great seal of the State, or the certificate and seal of the clerk or prothonotary of any court of the State where taken, attesting that such officer was at the time of taking authorized to take. If taken in this State by an officer not having a seal, or within or without this State under a special commission, the official signature of the officer or commissioner is sufficient, and when not certified according to law, the fact neglected may be shown by parol proof. Fees: 15c per folio and \$5 for all other services.

§ 400. **Canada**—Of witnesses outside of the province may be taken by commission upon interrogatories. Open commission can issue by consent of parties.

## CHAPTER V.

### NEGOTIABLE INSTRUMENTS.

§ 401. **Negotiable instruments.**—This chapter treats of one of the most responsible parts of a notary's duties. Grave complications are constantly arising from ignorance or neglect on the part of the notary, causing serious loss and damage, either to the notary himself, his bondsmen or his principals. A notary should have some knowledge of the law of commercial papers—the more the better. The moment a notary receives commercial paper for demanding acceptance, payment or protest, he immediately becomes the agent of the owner of the paper, his duty is to him and all others affected by the notary's official acts. An agreement by him to share any portion of his legal fees with a bank or others, to induce the placing in his hands of such papers, is void, on the ground of public policy. A notary, as a public officer, is independent of all outside influences. Mere favoritism in his selection for the official service cannot be regarded in any such agreement.<sup>2</sup>

§ 402. **Negotiable instruments** is a term constantly applied to bills of exchange, promissory notes and checks, which are made negotiable by being made payable to order or to bearer.<sup>1</sup>

**Negotiable paper** is that which passes freely from one person to another; to do this it is made payable to a payee, or order, or to bearer. When payable to order, it must be endorsed by the party presenting it. When payable to bearer, it requires no indorsement.

**Non-negotiable paper** is payable only to the payee, and mentions no "order" or bearer.

§ 403. **A bill of exchange** is a written order from one person to another, directing the person to whom it is addressed to

<sup>1</sup> Burrell's Law Dictionary.

146; supported by *Britton v. Nich-*

<sup>2</sup> *Ohio Nat. Bank of Washington* 104 U. S. 757.

*v. Hopkins*, 8 Court of App. D. C.

pay to a third person a certain sum of money therein named,<sup>3</sup> and to charge the same to his account. The parties are the **drawer**, who makes the bill; the **payee** to whom it is to be paid; the **drawee**, to whom it is directed; when the latter accepts it by writing his name across its face, he is the **acceptor**. When the payee writes his name on its back he is the **indorser**. Persons subsequently writing their names upon its back likewise become indorsers. Bills are either inland or foreign. An inland bill is a bill drawn and payable within the same country; all others are foreign bills.<sup>4</sup> The States of the Union are foreign to each other within the meaning of this article.<sup>5</sup> An architect's certificate notifying the owner of a building that a certain sum was due the contractors which was endorsed by the owner in the form of an order to his banker, is a check and not a bill of exchange.<sup>6</sup> The law recognizes as bills of exchange only instruments of writing for the payment of money.<sup>7</sup> If drawn in Wisconsin, but dated in Illinois, and is between citizens of Illinois, it is an inland bill.<sup>8</sup>

§ 404. A **check** is a written order to a bank by a person having money on deposit there desiring them to pay to the person named, or their order (or bearer) the sum of money mentioned. When payable to order it requires the drawee's signature, when payable to bearer it requires no signature. The drawer is the maker. The drawee is the one to whom it is payable. Checks should be presented to the bank without delay. The drawer or bank might fail, or the drawer check out his balance in bank. A certified check is one marked by the banker "good" when presented. Such a check can be presented any time anywhere, so long as the bank is good, for the bank then becomes responsible for it.<sup>9</sup>

It is a bill of exchange drawn upon a bank or individual banker, and is payable on demand. It is not a check if drawn payable in the future, but a true bill of exchange.

<sup>3</sup> Bouvier's Law Dict'y.

<sup>4</sup> Benjamin's Chalmers Bills p. 38.

<sup>5</sup> Benjamin's Chalmers Bills and notes, p. 39; Freeman's Bank v. Perkins, 18 Me. 292; Mason v. Dou-  
say, 35 Ill. 424; Dickens v. Beal, 10  
Peters 571.

<sup>6</sup> Ind. B'k v. Bowes, 165 Ill. 70.

<sup>7</sup> Bradley v. Moores, 4 Ill. (2  
Scam.) 182.

<sup>8</sup> Strawbridge v. Robinson, 10 Ill.  
(5 Gil.) 470.

<sup>9</sup> Byles on Bills p. 20.

Its parties are the **drawer**, who makes it; the **payee**, the one to be paid; the **drawee**, the bank on which it is drawn. When the payee writes his name on its back he is the **indorser**.

A check imparts a payment, not a loan.<sup>10</sup>

When a check is sent to some other place than where the bank is located upon which it is drawn, and it is put into a bank for collection, it is the duty of the bank to forward it, in proper time, to a sub-agent, selected with due care. The bank upon which it is drawn is not a suitable agent for its collection.<sup>11</sup>

§ 405. A **draft** is an inland bill of exchange.

§ 406. **Promissory note defined.**—Is a written engagement by one person to pay absolutely and unconditionally to another person therein named, or to his order, or to the bearer, a certain sum of money at a specified time, or on demand, or at sight.<sup>12</sup>

The parties to a promissory note are: The **maker**, who makes it; the **drawee**, to whom it is payable; the **indorser**, who writes his name on its back.

A promissory note must contain on its face an express promise to pay money; an instrument reading: "I. O. U. the sum of \$17.00 for value received," signed by the maker, is not a promissory note.<sup>13</sup>

## I. PRESENTMENT FOR ACCEPTANCE.

§ 407. An **acceptance** is the assent in due form by the drawer of a bill of exchange to the order of the drawer. It may be: Mode—1st. In writing on the bill, or on a separate paper. 2nd. Oral, implied from acts of the drawer. 3rd. A written or verbal promise to accept, either before or after the existence of the bill. Time—Such promise must be made within a reasonable time before or after the issue of the bill. It must specify the bill to be drawn so as to distinguish it

<sup>10</sup> *Bernard v. Fee*, 129 Mich. 429; *Y.*) 484; supported by *Story on Promissory Notes*, Sec. 1; *Chit. on Bills*, ed. 1839, p. 548; *Coolidge v. Ruggles*, 15 Mass. 387; also *Klauber v. Biggerstaff*, 47 Wis. 551.

<sup>11</sup> *Carson, Pirie, Scott & Co. v. Fincher*, 129 Mich. 687.

<sup>12</sup> *Hall v. Farmer*, 5 Denio (N.

<sup>13</sup> *Gay v. Rooke*, 151 Mass. 115.

from any other. Promise—It must be taken by the holder on the faith of such promise.<sup>14</sup>

§ 408. **What should be presented for acceptance.**—Presentment for acceptance is necessary in the case of a bill of exchange payable at or after sight. In other cases, in the absence of express stipulation, it is optional.<sup>15</sup>

§ 409. **Who may present.**—Any person in possession of a bill of exchange may present it for acceptance.<sup>16</sup>

§ 410. **Time for presenting.**—The holder of a bill of exchange, payable at or after sight, is bound either to negotiate it away or to present it for acceptance within a reasonable time. If he omit to do so, the drawer and prior indorsers are discharged. If payable otherwise it may be presented at any time before maturity.<sup>17</sup>

§ 411. **To whom.**—It must be made to the drawee personally, or to some person who has authority to accept or refuse acceptance on his behalf.<sup>18</sup>

§ 412. **Manner.**—An oral acceptance in Illinois of a bill of exchange is valid.<sup>19</sup> It is usually indicated by writing across the face of the bill the word "Accepted," adding the date and party's signature. A promise in writing to accept a bill of exchange will not, in law, amount to acceptance, unless the bill was taken on the strength of the letter.<sup>20</sup> A letter written within a reasonable time, describing a bill of exchange and promising to accept it, is, if shown to the person who

<sup>14</sup> Benjamin's Chalmers Bills & Notes, pp. 42, 43, 44; Jones v. Bank, 34 Ill. 313; Scudder v. Bank, 91 U. S. 406; Sturges v. Bank, 75 Ill. 595; Nelson v. Bank, 48 Ill. 37; Coffman v. Campbell, 87 Ill. 98; First Nat. B'k v. Pettit, 41 Ill. 492.

<sup>15</sup> Benjamin's Chalmers B. & N., p. 152; supported by Waller v. Stetson, 19 O. S. 400; Allen v. Suydam, 20 Wend. 323.

<sup>16</sup> Benjamin's Chalmers B. & N., p. 153; Freeman v. Boynton, 7 Mass. 483.

<sup>17</sup> Benjamin's Chalmers B. N. &

C., pp. 153-55; Strong v. King, 35 Ill. 9; Pryor v. Bowman, 38 Ia. 92; Wallace v. Agry, 4 Mason 336; Walsh v. Dart, 23 Wis. 334.

<sup>18</sup> Benjamin's Chalmers B. & N., p. 156; Sharpe v. Drew, 9 Ind. 281.

<sup>19</sup> Scudder v. Union Nat. B'k, 91 U. S. 406.

<sup>20</sup> McEvers v. Mason Hodgson & Co., 10 Johns. R. 207; Goodrich & DeF. v. Gordon, 15 Johns. R. 6; Mayhew v. Prince, 11 Mass. 54; Parker v. Greele, 2 Wendell, 545; Kennedy v. Geddes & Co., 8 Porter (Ala.) 258.

afterwards takes it on the strength of the letter, a virtual acceptance, binding the person making the promise.<sup>21</sup>

§ 413. **Delay.**—In order to charge the indorser on a note the holder must use due diligence.<sup>22</sup> Delay of more than a year in the proper presentation of a draft agreed to be accepted, is unreasonable.<sup>23</sup>

## II. PRESENTMENT FOR PAYMENT.

§ 414. **Presentment for payment.**—The date of the note is only prima facie evidence of the maker's residence, and in all cases due diligence must be exercised by the holder to discover the maker's residence.<sup>24</sup> It has been held that if, after the making and endorsement of the note, the maker absconds or moves out of the State, the holder is not bound to follow him to make the demand.<sup>25</sup> If he subsequently removes to another place in the same State, reasonable diligence must be made to discover his residence and make demand there. It seems also that if the maker of a promissory note resides and has his domicile in one State, and actually dates, makes and delivers it in another State, it will be sufficient for the holder to demand payment at the place where it is dated, if the maker cannot personally upon reasonable inquiries be found within the State, and has no known place of business there.<sup>26</sup> If demand at the place designated in the contract became impossible, as if the bank has ceased to exist, then demand at the place is excused. It is the existence, or non-existence of the bank, as a place of payment, that excuses the want of demand at that place; and not the state of its assets, nor their location, nor the amount or character of its business. When a particular place of payment is agreed upon, and the demand is not excused or made at such place, no personal demand of the maker can in any way fix a liability on the endorser of the paper sued upon. If a drawer of a note or acceptor of a bill, having a regular place of business, is absent from it, or has absconded

<sup>21</sup> Coolidge v. Payson, 2 Wheat. 61; Kennedy v. Geldes, 8 Porter (Ala.) 263.

<sup>22</sup> Baer v. Lichten, 24 Ill. App. 311.

<sup>23</sup> First Nat. B'k v. Bensley, 2 F. R. 609.

<sup>24</sup> 3rd Kent, 96.

<sup>25</sup> Andrews v. Drake, 14 Johnson, 114.

<sup>26</sup> Story's Prom. Notes, Sec. 236, citing Hepburn v. Toledano, 10 Martin (La.) 643.

before the day of payment, or if his house be closed, notice of such fact is equivalent to notice of the demand and dishonor of the paper.<sup>27</sup>

**Presentment** for payment of a check, reasonable time for where all the parties reside in the same city would be, until the close of banking hours of the next day after the giving of the check.<sup>28</sup>

§ 415. **To whom demand made.**—Demand may be made of the maker of the note, or of the acceptor of the bill, or of their resident agent if the parties themselves cannot be conveniently reached. The maker of a note should be present personally or by agent at the place of payment, prepared to make the payment. It is not necessary that the person making the presentment should be personally acquainted with the party in charge where the paper is payable.<sup>29</sup> In the absence of proof to the contrary it is sufficient to show a demand for payment of the drawer and his refusal.<sup>30</sup> Bills of exchange are always dishonored before they are handed to a notary to protest. The presentment and demand are practically of no moment to anyone. The material thing is notice of dishonor.<sup>31</sup> Diligent search must be made for the maker before protest, otherwise the note is not dishonored and the indorsers are discharged from liability. If payment has been made by an indorser under a notice of dishonor he is entitled to recovery and interest as damages from the time of payment.<sup>32</sup> No demand or notice is necessary on an absolute guaranty.<sup>33</sup> Nor when the drawer and drawee are the same.<sup>34</sup>

§ 416. **Time.**—The time of presentment for payment of a note is at its maturity which is indicated on the face of the note. The time of presentment for a draft is likewise indicated on its face. The holder's neglect to present for payment

<sup>27</sup> Bynum v. Apperson, 65 Tenn. 632.

<sup>28</sup> Brown v. Schintz, 98 Ill. App. 452, citing Bickford v. First Nat. B'k, 42 Ill. 238; Munn v. Burch, 25 Ill. 35; Gage Hotel Co. v. Union Nat. B'k, 171 Ill. 531.

<sup>29</sup> B'k of Cooperstown v. Woods, 28 N. Y. 561.

<sup>30</sup> Hunt v. Maybee, 7 N. Y. 266.

<sup>31</sup> Commercial B'k of Ky. v. Var-num, 49 N. Y. 269, citing Chitty on Bills, 457 (13th ed.).

<sup>32</sup> Talbot v. Nat. B'k of the Commonwealth, 129 Mass. 67.

<sup>33</sup> City S. B'k v. Hopson, 53 Conn. 453.

<sup>34</sup> Kaskaskia Bridge Co. v. Shannon, 1 Gil. 15.

at maturity, only affects his remedy against the drawer in case of the latter's insolvency occurring in the meantime, or some event to the prejudice of the drawer.<sup>35</sup> Where no time is specified, the law implies that it must be presented within a reasonable time. More than a year is unreasonable.<sup>36</sup> In case of non-payment, notice must be given promptly to the drawer, to charge him. Reasonable time depends on peculiar facts and must be judged accordingly.<sup>37</sup> A note payable Feb. 1st, 1839, presented at bank and protested June 9, 1842, did not discharge the maker in the absence of proof that he had funds there at the appointed day, nor that he has sustained any loss or injury by the delay in presentment.<sup>38</sup> In the absence of statutory provision to the contrary, a bill presented for payment on the last day of grace is presented in proper time.<sup>39</sup>

§ 417. **Hour.**—It may be presented any reasonable hour of the day, during business hours at the place of business or before the person retires for rest at the dwelling. A note presented during business hours, at the place of payment, and payment demanded, which the maker refused, the protesting being made on the same day was not premature.<sup>40</sup> When not presented at a bank it may be presented any hour before bed time.<sup>41</sup>

§ 418. **Place.**—If not indicated on the instrument where it is payable, then it should be presented at the party's place of business during his business hours. If they have no place of business, then at the dwelling, or wherever they can be found. No formal demand is necessary where the bill is payable at a bank.<sup>42</sup> Where the maker and indorser of a bill of exchange reside in one State and the payment is to be made in another State, the parties elect to make the bill foreign and protest must be made where it is payable.<sup>43</sup> The

<sup>35</sup> Springfield M. & F. Ins. Co. v. Tincher, 30 Ill. 399.

<sup>36</sup> First Nat. Bk. of Lacon v. Bensley, 2 F. R. 609.

<sup>37</sup> Montelius v. Charles, 76 Ill. 303.

<sup>38</sup> Bradford v. Cooper, 1 La. Ann. 325; Wallace v. McConnell, 13 Peters, 136.

<sup>39</sup> Cook v. Renick, 19 Ill. 598; Elsten v. Dewes, 28 Ill. 438; Reese v. Mitchell, 41 Ill. 365.

<sup>40</sup> Guignon v. Union T. Co., 53 Ill. App. 581.

<sup>41</sup> Skelton v. Dustin, 92 Ill. 49.

<sup>42</sup> Ning v. Beach, 31 Ill. App. 78.

<sup>43</sup> Warren v. Warren, 16 Me. 259.

notary's protest is competent evidence of its non-payment. The law of the place where the bill is payable governs as to time of presentment and payment.<sup>44</sup>

§ 419. **Mode.**—The person who presents a bill for payment must produce it and must be ready and willing to deliver it up on receiving payment. When the bill is not produced, but payment is refused on some other ground, the bill is deemed to have been duly presented.<sup>45</sup>

§ 420. **Excuse for delay.**—An impossibility in presenting for payment is about the only excuse admissible. The inquiry will always be whether, under the circumstances, due diligence has been used. These circumstances must be stated in the certificate, that the court and jury may see whether there has been due diligence. There must appear some fact to excuse demand; as that the maker could not be found at his last place of business, or that he had absconded, left the State, his place of residence deserted, or that the endorser, and others likely to know, had been inquired of and could not tell, or some other fact as recognized in the books. The liability of the endorser depends upon the diligence of the holder in demanding payment of the maker. The question of diligence is one of law and fact, to be determined by the court and jury and not to be certified by the notary.<sup>46</sup>

§ 421. **Dishonor.**—A bill, check or note is dishonored when refused to be accepted, or paid on presentation. The drawer and all interested parties should be immediately given notice of the time, place and reason.<sup>47</sup>

§ 422. **Noting.**—Before a protest for dishonor can be made, the notary himself, unless by statute, or a well-established custom, a deputy is authorized, must make a presentment for acceptance or payment. Then, in case of refusal, it is his duty to "note" the fact, at the time, on the very day of dishonor.<sup>48</sup>

The "noting" consists of the notary's initials, the date, and the amount of the noting charges, and sometimes a statement

<sup>44</sup> *Pierce v. Indseth*, 106 U. S. 546; *Woolley v. Lyon*, 117 Ill. 244.

<sup>47</sup> *Chitty on Bills*, 256.

<sup>45</sup> *Benjamin's Chalmers B. & N.*, p. 165.

<sup>48</sup> *Proffatt's Notaries*, p. 267; *Daniel's Neg. Inst. Vol. 2*, fourth ed. p. 10.

<sup>46</sup> *Cockrill v. Lowenstein & Bro.*, 65 Tenn. 206.

of the cause of dishonor, e. g., "no effects," or "no advice," or "no account." The noting is usually made on a ticket attached to the bill.<sup>49</sup> This is done to charge the memory of the notary. After noting, the bill is then protested.<sup>50</sup>

### III. PROTEST.

§ 423. **Protest** is a notarial act, made for want of payment of a promissory note, or for want of acceptance or payment of a bill of exchange, by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, exchanges, re-exchanges, etc.<sup>51</sup> The term is not applicable, technically, to promissory notes, but by general usage includes all acts necessary by law to charge an endorser. In business, when a note is said to be protested, something more is understood than the official declaration of a notary, a request by an indorser to the indorsees "not to protest, that he would waive the necessity thereof," includes all acts popularly accepted by the term. The only thing necessary for the indorsees to do is to demand payment of the maker and give notice to their indorser.<sup>52</sup> It includes all that is necessary to hold the indorsers.<sup>53</sup>

§ 424. **Protest is to charge the indorser.**—The protest of a foreign bill must be made in order to charge the drawer or indorser, unless some good excuse can be made for the omission; but the omission to allege protest in an action, if an objection at all, is only one of form. It cannot be reached by general demurrer.<sup>54</sup> The protest is evidence of demand and protest.<sup>55</sup> This is the formal notice to the world of the dishonor of a negotiable instrument, notice of which is sent to each and every party interested, either as maker, drawer, indorser or acceptor of it. The statute of Illinois defining the duties of notary public "protests" are but declaratory of their duties in this State upon the subject.<sup>56</sup> No authority is given by statute to any notary to certify a fact independent

<sup>49</sup> Benjamin's Chalmers B. & N. p. 177; Chitty on Bills, 333 (11th Am. ed.).

<sup>50</sup> Bailey v. Dozier, 6 How. 23; Dennistoun v. Stewart, 17 How. 607.

<sup>51</sup> Bouvier's Law Dicty.

<sup>52</sup> Coddington v. Davis, 1 N. Y. 186.

<sup>53</sup> City S. Bk. v. Hopson, 53 Conn.

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<sup>54</sup> Hart v. Otis, 41 Ill. App. 43.

<sup>55</sup> Dickens v. Beal, 10 Peters, 571.

<sup>56</sup> Skelton v. Dustin, 92 Ill. 49.

of the protest.<sup>57</sup> A notary's protest of commercial papers must be made on his own knowledge of the facts, and not on hearsay.<sup>58</sup> It must be necessary in order to fix the indorser's liability, otherwise he cannot be subjected to costs of protest.<sup>59</sup>

§ 425. **What should be protested.**—Any negotiable instruments are subject to protest. An inland bill need not be protested.<sup>60</sup>

§ 427. **Place of.**—The law of the place where the notes are payable govern as to time and mode of presentment for payment, manner of process and giving of notice.<sup>61</sup> Where payment is demanded at the place the note is, by its terms, to be paid, other demand upon the maker is not required.<sup>62</sup> The notary's certificate of protest is presumptive evidence of presentment during the proper business hours. These, except where the paper is due from a bank, for the purpose of presenting a note or bill for payment, range until bed time in the evening.<sup>63</sup>

§ 428. **By whom.**—A notarial certificate of protest stating that the presentment and demand was made by the notary, when it was made by his clerk, voids the certificate.<sup>64</sup> The protest must be made by a notary public or other person authorized to act as such.<sup>65</sup> Where protest is necessary, the notary must present the bill in person, unless power has been given to him to substitute another in his place or where custom warrants a presentment by deputy.<sup>66</sup> The law presumes that the holder of a negotiable instrument acquired it without notice of anything to impeach his title. The title of a bona fide holder for value on accepted draft indorsed in blank, is not affected by the fact that the party from whom he received it,

<sup>57</sup> Whitman etc. v. Farmers Bk. of Chattahoochee, 8 Porter (Ala.) 258.

<sup>58</sup> Williamson v. Turner, 2 Bay (S. C.) 410.

<sup>59</sup> McKay v. Hinman, 13 Neb. 33.

<sup>60</sup> Smith v. Curlee, 59 Ill. 221.

<sup>61</sup> Wooley v. Lyon, 117 Ill. 244; Pierce v. Indseth, 106 U. S. 546.

<sup>62</sup> Guignon v. Union T. Co., 53 Ill. App. 581.

<sup>63</sup> Skelton v. Dustin, 92 Ill. 49.

<sup>64</sup> Gowtry v. Doane, 51 N. Y. 84.

<sup>65</sup> Benjamin's Chalmers Bills & Notes, p. 177.

<sup>66</sup> Meehem's P. O. Sec. 704; Com.

Bank v. Varnum, 49 N. Y. 269; Cribbs v. Adams, 13 Gray, 597.

before its maturity, had possession of it for certain purposes and misappropriated it.<sup>67</sup>

§ 429. **Form.**—The protest should contain: First. An exact copy of the bill, or the bill itself annexed. Second. A statement of the parties for whom and against whom the bill is protested. Third. The date of protesting and the date where protest is made. Fourth. A statement that acceptance or payment was demanded by the notary; the terms of the answer, if any; or a statement that no answer was given, or that the drawee or acceptor could not be found. Fifth. A reservation of rights against the party liable. Sixth. The subscription and seal of the notary making the protest. A protest may be in duplicate or triplicate.<sup>68</sup>

§ 430. **Foreign bill.**—A foreign bill of exchange should be noted for protest on the day that it is dishonored. When a foreign bill of exchange is dishonored it must be duly protested for non-acceptance or non-payment, as the case may be, in order that the holder may preserve his right of recourse against the drawer and indorsers. When the acceptor of a bill of exchange becomes bankrupt before its maturity it may be protested for better security.<sup>69</sup>

§ 431. **Statement of facts.**—A statement of the facts in connection with a notary's protest cannot vitiate a protest otherwise properly made. A necessary statement or averment, well stated, is not weakened or in any manner affected by the statement of facts not necessary to be stated.<sup>70</sup>

§ 432. **Record is prima facie evidence.**—The statute, making a notary's record of the protest of bills which he is required to keep, or a certified copy thereof, prima facie evidence of the facts therein stated, applies to all bills, both domestic and foreign. Such record or copy is prima facie evidence of demand of payment of the drawee, and of notice of dishonor to the drawer. It is liable, however, to be rebutted by other

<sup>67</sup> Collens v. Gilbert, 94 U. S. 753; Shaw v. Ry. Co., 101 U. S. 563; Brown v. Sheppard, 95 U. S. 481; Soloy v. Bank, 39 La. Ann. 90.

<sup>68</sup> Benjamin's Chalmers B. & N. 177.

<sup>69</sup> Benjamin's Chalmers Bills N. etc., pp. 178-80; Ocean Bank v. Williams, 102 Mass. 141; Jaccard v. Anderson, 37 Mo. 91.

<sup>70</sup> Reapers Bank v. Willard, 24 Ill. 439.

competent evidence.<sup>71</sup> A certificate of protest by a notary of another State, under the notary's seal, is *prima facie* evidence that the act had been done by him.<sup>72</sup> In the case of inland bills of exchange, the notarial protest is not evidence of a demand of payment on the drawee nor of notice of non-payment to the drawer.<sup>73</sup> The notarial certificate of protest is not evidence of that fact.<sup>74</sup> A notarial certificate of protest under seal is good on mere production.<sup>75</sup>

§ 433. **Notary—Signature.**—A note protested by Wm. H. Scudder Jr., and signed Wm. H. Scudder, sworn to by Wm. H. Scudder Jr., does not justify the inference that two different persons officiated in the protest.<sup>76</sup> Under the civil law the signature alone of the notary was sufficient without the seal. Many English writers mention only the signature. The protest is said to be a part of the constitution of a foreign bill of exchange. The form is governed by the *lex loci contractus* (where the contract was made) and when required cannot be dispensed with. When the protest, or authenticated copies, is to be received in evidence, the *lex fori* (court where received) governs.<sup>77</sup> Courts take judicial notice of the law merchant, which prevails throughout the United States, except in States where it is so far modified by statute. A notarial protest is known under that law, and it requires no witnesses in conjunction with the notary. His act, certified by his signature and official seal, suffices.<sup>78</sup>

§ 434. **Protesting national bank notes.**—Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in

<sup>71</sup> *Montelius v. Charles*, 76 Ill. 503.

<sup>72</sup> *Fletcher v. Ark. Nat. Bk.*, 62 Ark. 265.

<sup>73</sup> *Kaskaskia Bridge Co. v. Shan-non*, 1 Gil. 15.

<sup>74</sup> *McAllister v. Smith*, 17 Ill. 328.

<sup>75</sup> So held in *Johnson v. Brown*, 154 Mass. 105; supported by *Porter v. Johnson*, 1 Gray, 175; *Pierce v.*

*Indseth*, 106 U. S. 546; *Browne v. Phila. Bk.*, 6 S. & R. 484; *Townsley v. Sumivall*, 2 Pet. 170; *Carter v. Burley*, 9 N. H. 558, 566.

<sup>76</sup> *Guignon v. Union T. Co.*, 53 Ill. App. 581.

<sup>77</sup> *Bank of Rochester v. Gray*, 2 Hill (N. Y.) 227.

<sup>78</sup> *Bradford v. Cooper*, 1 La. Ann. 325.

one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable, offers to waive demand and notice of the protest and in pursuance of such offer, makes, signs and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest or upon receiving such admission, shall forthwith forward such admission or notice of protest to the comptroller of the currency, retaining a copy thereof. If any satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.<sup>79</sup>

After a default on the part of an association to pay any of its circulating notes has been ascertained by the comptroller, and notice (if forfeiture of the bonds thereof) has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits.<sup>80</sup>

Where no stipulation for interest is made in the note it can only be allowed from the time of protest.<sup>81</sup>

#### IV. NOTICE OF PROTEST.

§ 435. **Notice.**—It is not the notice of demand and non-payment that fixes the liability of the indorser, it is the fact of such presentment and dishonor and notice. On a foreign bill, the notarial protest and seal is evidence of the fact, but in case of a promissory note it is not (unless in case of the removal or death of the notary); the demand and refusal must be proved by other evidence.<sup>82</sup> A demand of payment and

<sup>79</sup> U. S. Rev. Stat. 1878, Sec. 5226.

<sup>82</sup> *Barkalow v. Johnson*, 16 N. J.

<sup>80</sup> U. S. Rev. Stat. Sec. 5228.

397.

<sup>81</sup> *Bradford v. Cooper*, 1 La. Ann.

notice to the indorser is sufficient to charge the indorser. Waiving the necessity of protest by the indorser dispenses with both. Notice may be written or verbal.<sup>83</sup>

§ 436. **Form of notice.**—No particular phrase or form is necessary. The object of it is to inform the party to whom it is sent: First, that the bill or note has been presented; second, that it has been dishonored by non-acceptance, or non-payment; and, third, that the holder considers him liable, and looks to him for payment. And in framing the notice, all that is necessary to apprise the party of the dishonor of the instrument is to intimate that he is expected to pay it. It should comprise, first, a sufficient description of the bill or note to ascertain its identity; second, that it has been duly presented for acceptance or payment to the drawee, acceptor or maker; third, that it has been dishonored by non-acceptance or non-payment; fourth, that the holder looks to the party notified for payment.<sup>84</sup> The notary's name may be printed at the foot of the notification.<sup>85</sup> A notice sufficiently descriptive to perfectly identify a note in mind, without knowledge of others of same tenor and date, is sufficient.<sup>86</sup> No precise form of words is necessary in giving notice. The terms used must be expressed or implied, sufficiently to identify the note, that payment of it on due presentment has been neglected or refused by the maker.<sup>87</sup>

It is not necessary to state that the note was presented for payment, or that the holder looks to the endorser, this may be made to appear by implication.<sup>88</sup>

A single seal to several certificates of a notary's is sufficient; he may certify to each act separately and by one certificate verify them all. If it be under his hand and seal of office it is sufficient. It is unimportant where the seal is affixed. He is not required to certify to the sealing.<sup>89</sup>

<sup>83</sup> Coddington v. Davis, 1 N. Y. 186; Cayuga Co. Bk. v. Warden, 1 N. Y. 413.

<sup>84</sup> Daniels' Neg. Inst. 4th ed. p. 34; Mills v. Bank, 11 Wheaton, 431; Gilbert v. Dennis, 3 Met. 495.

<sup>85</sup> Bk. of Cooperstown v. Woods, 28 N. Y. 561; Sussex Bk. v. Baldwin, 17 N. J. 487.

<sup>86</sup> Bank of Cooperstown v. Woods, 28 N. Y. 561.

<sup>87</sup> Cayuga Co. Bk. v. Warden, 1 N. Y. 413; Same, 6 N. Y. 19; Cook v. Litchfield, 9 N. Y. 279.

<sup>88</sup> Burgess v. Vreeland, 24 N. J. 71.

<sup>89</sup> Olcott v. Tioga R. R. Co., 27 N. Y. 546.

§ 437. **Description of instrument.**—The notice should describe the bill or note in unmistakable terms. Should state where the note is, that the party notified may find it; should state who the holder is, and who gives the notice, or at whose request it is given. The object of the law in requiring a correct description in the notice to the drawer or indorser is that he may be put upon notice of the extent of his liability, and placed in possession of the material facts necessary to enable him to secure the liability of others over to him.<sup>90</sup> Name of maker must be stated.<sup>91</sup>

§ 438. **To whom notice given.**—When a bill is dishonored, due notice of dishonor, unless excused, is a condition precedent to the liability of the drawer or any indorser thereof.<sup>92</sup> Notice should be sent to all the parties meant to be held liable for payment.<sup>93</sup> Each indorser of a bill or note is entitled to notice, and so also is the drawer of a bill payable to a third party, as bills generally are. The acceptor of a bill and the maker of a note are not entitled to notice, they being the primary debtors; nor are those who, from their irregular execution of the instrument, are adjudged joint makers or sureties, their contract being to pay in default of the principal at all events.<sup>94</sup> When an indorser becomes bankrupt and assigns, notice of protest to his assignee will bind such indorser.<sup>95</sup> In Illinois the maker and indorsers of every bill, note or written instrument protested must be notified.<sup>96</sup> A primary debtor, not an endorser, is not entitled to notice of dishonor of a note.<sup>97</sup> Notice of refusal to pay must be given to the drawer, where he has or expects funds in the hands of the drawee, for the protection of both.<sup>98</sup> Failure to promptly present a check for payment and to promptly notify the drawer of its non-payment does not discharge the drawer unless he has

<sup>90</sup> Daniels' Neg. Inst. 4th ed. p. 34; Howland v. Adams v. Vroom, 30 N. J. 41.

<sup>91</sup> Home Ins. Co. v. Green, 19 N. Y. 518.

<sup>92</sup> Benjamin's Chalmers B. & N. p. 182; Kupfer v. Galena Bank, 34 Ill. 328; Walker v. Rogers, 40 Ill. 278; Wood v. Surrells, 89 Ill. 107.

<sup>93</sup> Daniels Neg. Inst. p. 46.

<sup>94</sup> Walker v. Rogers, 40 Ill. 278.

<sup>95</sup> Am. Nat. Bk. v. Junk Bros., 94 Tenn. 624.

<sup>96</sup> S. & C. Ill. Anno. Stat. 1896, p. 2818.

<sup>97</sup> Guignon v. Union T. Co., 53 Ill. App. 581.

<sup>98</sup> Kupfer v. Galena Bank, 34 Ill. 328; Welch v. Taylor Mfg. Co., 82 Ill. 579.

suffered some loss or injury thereby.<sup>1</sup> A bill of exchange must be presented to the drawee within a reasonable time, and where payment is refused, notice must be given promptly to the drawer, otherwise he cannot be held liable.<sup>2</sup> Where a bill indorsed by a partnership is dishonored, notice to either of the late partners is sufficient to bind all.<sup>3</sup> Where there are several successive indorsers, the holder may, and ordinarily does, give notice to all, with a view to preserve his recourse upon all. But he is not bound to give notice to all, in order to bind those to whom he does give it. He may, if he please, give notice to any one or more of the indorsers, who are then made liable to him; and the indorser receiving notice must then notify antecedent indorsers in order to assure himself. It is not, therefore, necessary for the notary to take any notice of the residence of the maker of the note, or make any inquiry as to the residence of any of the endorsers except the last.<sup>4</sup>

If the party entitled to notice be dead, and this is known to the holder, notice should be sent to his executor or administrator. The address should be to such party by name. To one of several executors, or administrators, is sufficient.<sup>5</sup> Notice to agent is notice to the principal.<sup>6</sup> Notice to the assignor of an instrument need not be given by the assignee to charge the assignor.<sup>7</sup>

**§ 439. Who may give notice.**—It is not necessary that a notary should make presentment, or give the notice of protest; an agent having parol authority or the possession of the paper is sufficient. A notary cannot delegate his power to protest.<sup>8</sup> Notice must be given by the holder or one of the parties thereto; a stranger is not sufficient. An agent of either may give it, but in doing so he acts for his principal, although he

<sup>1</sup> Ind. Bk. v. Bowes, 165 Ill. 70.

<sup>2</sup> Industrial Bk. v. Bowes Jr., 165 Ill. 70; Montelius v. Charles, 76 Ill. 303; Bickford v. First Nat. Bk. of Chi., 42 Ill. 238.

<sup>3</sup> Hubbard v. Matthews, 54 N. Y. 43; supported by Brown v. Turner, 15 Ala. U. S. 832; Coster v. Thomson, 19 Ala. U. S. 717; Slocomb v. Lizardi, 21 La. Ann. 355; Gates v. Beecher, 60 N. Y. 518.

<sup>4</sup> Daniels' Neg. Inst., 4th ed. p. 53.

<sup>5</sup> Daniels' Neg. Inst., 4th ed. p. 59; Mass. Bank v. Oliver, 10 Cush. 557; Beals v. Peck, 12 Barbour, 245.

<sup>6</sup> Iglehart v. Gibson, 56 Ill. 81.

<sup>7</sup> State Bk. v. Hawley, 1 Seam. (Ill.) 580; Harding v. Dilley, 60 Ill. 528.

<sup>8</sup> Hunt v. Maybee, 7 N. Y. 266; Cole v. Jessup, 10 N. Y. 96.

may be a notary acting in his official character.<sup>9</sup> The circumstances which excuse demand do not relieve the holder from giving due notice to the indorser, if like circumstances do not intervene to prevent that also. Mere personal knowledge by the indorser will not dispense with notice.<sup>10</sup> It is usual for the holder only to give notice to the person from whom he immediately received the bill or note, especially if he is ignorant of the residence of the other parties, his neglect to give notice cannot deprive either of the others of the right to proceed against the person who indorsed to him, provided he in his turn has duly forwarded notice.<sup>11</sup> Each party to a bill or note, whether by indorsement or mere delivery, has, in all cases, until the day after he has received notice to give or forward notice to his prior indorser.<sup>12</sup> It should emanate from the holder at the time of its dishonor.<sup>13</sup> If the holder be dead, notice may be given by his personal representative.<sup>14</sup>

§ 440. **Manner of giving notice.**—The notice need not be in writing; it is sufficient if it be given verbally; but for precision and safety written notice is preferable. Mere knowledge of dishonor does not constitute notice. When the fact is communicated it is then to be inferred that the intention is to hold the party notified responsible.<sup>15</sup> Notice must be in writing in Illinois.<sup>16</sup> It must be personal if parties reside in same town. Otherwise notice by mail is sufficient.<sup>17</sup> Depositing notice in a street P. O. box is the same as in the postoffice.<sup>18</sup> Notice sent to the indorser's place of business, and there remailed to his residence by his bookkeeper, duly stamped, with return card on envelope, and sent to the postoffice by the

<sup>9</sup> Lawrence v. Miller, 16 N. Y. 235.

<sup>10</sup> Lane v. Bank of W. Tenn., 65 Tenn. 419.

<sup>11</sup> Chitty on Bills, 520; Whitman v. Hubbard, 8 Porter, Ala. 258.

<sup>12</sup> Whitman etc. v. Farmers' Bk. of Chattahoochee, 8 Porter (Ala.) 258.

<sup>13</sup> Daniels' Neg. Inst., p. 46; Cromer v. Platt, 37 Mich. 132; Bank of Utica v. Smith, 18 Johns. 230.

<sup>14</sup> White v. Stoddard, 11 Gray,

258; Mass. Bank v. Oliver, 10 Cush. 557; Cayuga Bk. v. Bennett, 5 Hill, 236.

<sup>15</sup> Daniels' Neg. Inst., 4th ed. p. 33.

<sup>16</sup> Starr & Curtis' Anno. Stat. of Ill., 1896 Ed., p. 2818.

<sup>17</sup> Shepard v. Hall, 1 Conn. 329; Hartford Bk. v. Stedman, 3 Conn. 489.

<sup>18</sup> Johnson v. Browne, 154 Mass. 105; supported by Skilbeck v. Garbett, 72 B. 846; Pearce v. Longfit, 101 Pa. St. 507.

office boy, as customary with the daily mail, is sufficient, although never received by the indorser.<sup>19</sup> Notice left at the room where indorser does business and receives mail, although he is often absent for some time, is sufficient.<sup>20</sup> If left at the indorser's office in a conspicuous place it is sufficient.<sup>21</sup> Where the indorser has no regular place of residence which the reasonable diligence of the holder can enable him to discover, the law dispenses with giving regular notice.<sup>22</sup> When the indorser resides at the place of presentment and dishonor of the note the notice must be served on him personally, or left at his dwelling or place of business if he has one there.<sup>23</sup> And no particular form of words is necessary, but such as to convey notice of dishonor and a description of the bill showing the facts of refusal to accept or pay upon presentment at the right time and place.<sup>24</sup> It is not incumbent on the indorser to show the holder where the maker is to be found, so that he may make a demand on the maker, when no application is made to him by the holder.<sup>25</sup> If facts exist which render a notice uncertain or equivocal, and the knowledge of these facts are confined to the indorser, or is not brought home to the holder of the paper, the notice is sufficient to charge the indorser.<sup>26</sup> The giving of notice is no part of the province or duty of a notary.<sup>27</sup> If the indorser resides out of the State it may be mailed to his place of business or where he receives his mail.<sup>28</sup> If addressed to the indorser and left at the postoffice where he is postmaster it is sufficient.<sup>29</sup> If the parties are not to be found at their place of business it may be left at their residence with any one residing in the family, providing the party himself is not at home.<sup>30</sup> If sent by mail it must be properly

<sup>19</sup> *Swampscott Mach. Co. v. Rice*, 159 Mass. 404.

<sup>20</sup> *Lamkin v. Edgerly*, 151 Mass. 348.

<sup>21</sup> *Hobbs v. Strawe*, 149 Mass. 212.

<sup>22</sup> *Hunt v. Maybee*, 7 N. Y. 266.

<sup>23</sup> *Van Vechten v. Pruyn*, 13 N. Y. 549; supported by *Ireland v. Kip*, 10 Johns, 490; *Ransom v. Mack*, 2 Hill, 587; *Shelden v. Benham*, 4 Hill, 129; *Smedes v. Bank of Utica*, 20 Johns, 372.

<sup>24</sup> *Bynum v. Apperson*, 65 Tenn. 632.

<sup>25</sup> *Lane v. Bk. of W. Tenn*, 65 Tenn. 419.

<sup>26</sup> *Bk. of Cooperstown v. Woods*, 28 N. Y. 545.

<sup>27</sup> *Bk. of Rochester v. Gray*, 2 Hill, N. Y. 227.

<sup>28</sup> *Wooley v. Lyon*, 117 Ill. 244.

<sup>29</sup> *Cook v. Renick*, 19 Ill. 598.

<sup>30</sup> *Blakely v. Grant*, 6 Mass. 386; *Adams v. Wright*, 14 Wis. 408; *John v. Bank*, 57 Ala. 96.

addressed to the party at a distance. It should be directed to the postoffice at or nearest to the party's place of residence or place of business.<sup>31</sup> The main thing is to show that notice was received by the proper person within proper time. A notice stating that it had been given in writing, of the demand, non-payment and protest to the indorsers and left at their offices is sufficient.<sup>32</sup> Where the parties reside in the same town a notice left at the place of business of the individual is sufficiently described as the office of the party.<sup>33</sup>

§ 441. **Time.**—Notice of protest must be sent within a reasonable time; it must be shown by whom notice was sent and the time of depositing in the mail.<sup>34</sup> Notice on the day the note was protested is not too soon, it must be given on the next day, or placed in the postoffice, to be sent by the next mail.<sup>35</sup> On the removal of the impediment, preventing the giving notice, the holder must give notice of the dishonor within a reasonable time.<sup>36</sup> By presentment on the day of maturity and giving notice of dishonor the liability of the drawer of an inland bill is fixed.<sup>37</sup> It is the duty of the holder to give immediate notice to the drawer if it be a bill, and to the indorser whether it be a bill or note. The party primarily liable is not entitled to notice, for it was his duty to have provided for payment of the paper; and the fact that he is maker or acceptor for accommodation does not change the rule. Notice is not due to any party to a bill or note not negotiable.<sup>38</sup> As soon as the demand is made and the dishonor has occurred, the holder need not wait until the close of business hours to send notice. He is not obliged to give notice on the very day of dishonor; he has the option until the expiration of the following day.<sup>39</sup> Each successive party who receives notice is

<sup>31</sup> Daniels' Neg. Inst., p. 77; Sherman v. Clark, 3 McLean, 91; Bank of Columbia v. Lawrence, 1 Peters, 578.

<sup>32</sup> Curry v. Bk. of Mobile, 8 Porter, Ala. 360.

<sup>33</sup> Curry v. Bk. of Mobile, 8 Porter, Ala. 360.

<sup>34</sup> Apple v. Lesser, 93 Ga. 749.

<sup>35</sup> Curry v. Bk. of Mobile, 8 Porter, Ala. 360.

<sup>36</sup> Bynum v. Apperson, 65 Tenn. 632.

<sup>37</sup> Wood v. Surrells, 89 Ill. 107.

<sup>38</sup> Daniels' Neg. Inst., 4th ed. p. 30; Farmers' Bk. v. Durrall, 7 G. & J. 78; King v. Crowell, 61 Me. 244.

<sup>39</sup> Daniels' Neg. Inst., 4th ed. pp. 90-91; Bank of Alexandria v. Swan, 9 Peters, 33; Adams v. Wright, 14 Wis. 498; Haskell v. Boardman, 8 Allen, 38; Carter v. Burley, 9 N. H. 558.

entitled to a full day to transmit it to any antecedent party who is chargeable over to him upon payment of the bill or note.<sup>40</sup> It is immaterial whether the indorser receives notice so long as he is properly served. The rights of a holder of a note are not affected if the notice does not reach the indorser. Due diligence in serving him notice is sufficient.<sup>41</sup> A note falling due on Saturday, the last day of grace, and protested on that day, notice need not be given until the following Monday; the indorser has until the day following to give notice to the previous indorsers.<sup>42</sup> When parties reside in different places, diligence consists in sending notice by the first mail of the day of protest.<sup>43</sup> It must be placed in the postoffice in time to go by mail of the day following the day of dishonor. It is necessary to show positively that the notice was deposited in time for the mail of the day following.<sup>44</sup> If sent by mail, it may be sent on the day following the third day of grace.<sup>45</sup> A written notice to the indorser, properly mailed, though never received by him, is due diligence.<sup>46</sup>

§ 442. **Notice necessary to indorsers.**—In order to fix the liability of indorsers to a promissory note they must be promptly notified that demand had been made of the maker and payment refused, and that the holder looks to them for payment.<sup>47</sup> Diligence is required of the holder to ascertain where the indorser or maker can be found and advise the notary. Where the estate of a deceased person is sufficient to pay all claims, the failure by a holder of decedent's note to file the same as a claim against the estate will operate to release a surety thereon.<sup>48</sup> The circumstances which in the law merchant will excuse the demand and notice necessary to charge an indorser, are such as amount in themselves, to a

<sup>40</sup> Daniels' Neg. Inst., p. 96; Howland v. Adams, 30 N. J. 41.

<sup>41</sup> Gawtry v. Doane, 51 N. Y. 84; Dickens v. Beal, 10 Peters 571.

<sup>42</sup> Farmers' Bk. of Bridgeport v. Vail, 21 N. Y. 485; Hendershot v. Neb. Nat. Bk., 25 Neb. 127; Phelps v. Stocking, 21 Neb. 443.

<sup>43</sup> Dickens v. Beal, 10 Peters 571.

<sup>44</sup> Burgess v. Vreeland, 24 N. J. 71; State Bank of Elizabethtown v. Ayers, 7 N. J. 130.

<sup>45</sup> Sussex Bk. v. Baldwin, 17 N. J. 487; Howland v. Adrian, 30 N. J. 41; Woodruff v. Daggett, 20 N. J. 526.

<sup>46</sup> Washington Banking Co. v. King, 9 N. J. 45; Ferris v. Saxton, 4 N. J. 1.

<sup>47</sup> Lawrence v. Miller, 16 N. Y. 235.

<sup>48</sup> Waughop v. Bartlett, 165 Ill.

dishonor of the paper by operation of law. They are such as impose a moral or physical impossibility to make the demand with the exercise of that prudent and diligent forecast and attention that a prudent man would use in relation to his own affairs, or the absence of all necessity for demand, superinduced by the changed condition or relation of the parties.<sup>49</sup> Adding the word "Memphis" under his name, by the indorser, may be held as an implied direction to give notice through the postoffice at Memphis.<sup>50</sup> Every joint indorser is entitled to notice.<sup>51</sup> Demand and notice by the notary is sufficient.<sup>52</sup> A person having contracted to assume the liability of indorser, he cannot be held as a guarantor.<sup>53</sup>

§ 443. **Delay.**—Negligence in sending notice of protest is no excuse. If the indorser fails to receive notice he is discharged from liability unless the holder shows he has used due diligence in his efforts to find him. Where this can be shown, however, it is immaterial that the notice does not reach the indorser.<sup>54</sup> An indorser who has changed his residence without the knowledge of the holder is bound by notice sent to his former place of residence, if the holder is not guilty of negligence in his failure to have knowledge of the change.<sup>55</sup>

§ 444. **Failure to notify.**—Failure to notify the indorser not only discharges him as a party to the note, but also a debtor upon the original consideration, though it be secured by a mortgage or deed of trust.<sup>56</sup> The reputed insolvency of the maker of a note is no excuse for not sending notice to the indorser.<sup>57</sup>

§ 445. **Excuses for non-notice.**—Notice of dishonor is dispensed with—(1) When the drawer or indorser sought to be

<sup>49</sup> Lane v. Bk. of W. Tenn., 9 Heisk. (Tenn.) 419.

<sup>50</sup> Tomeny v. The German Nat. Bk., 9 Heisk. (Tenn.) 493.

<sup>51</sup> Shepard v. Hawley, 1 Conn. 367.

<sup>52</sup> Hartford Bank v. Stedman, 3 Conn. 489.

<sup>53</sup> Milligan v. Holbrook, 68 Ill. App. 631.

<sup>54</sup> Am. Nat. Bk. v. Junk Bros. Lumber & Mfg. Co., 94 Tenn. 624.

<sup>55</sup> Am. Nat. Bk. v. Junk, 94 Tenn. 624; Bk. of Utica v. Phillips, 3 Wend. 408; Requa v. Collins, 51 N. Y. 148; Harris v. Memphis Bk., 4 Hum. 518.

<sup>56</sup> Daniels' Neg. Inst., 4th ed., p. 32; Fitchburg Ins. Co. v. Davis, 121 Mass. 121; Benjamin's Chalmers, 183; Miers v. Brown, 11 M. & W. 372.

<sup>57</sup> Oliver v. Munday, 2 N. J. 982; Snyder v. Findley, 1 N. J. 78.

charged is, as between the parties to the bill, the principal debtor, and has no reason to expect that it will be honored on presentment. (2) As regards the drawer, when drawer and drawee are the same person, or identical in interest. (3) When the drawer or indorser sought to be charged is the person to whom the bill is presented for payment. (4) When the drawee is a fictitious person, or (perhaps) a person not having capacity to contract, and the drawer or indorser sought to be charged was aware of the fact at the time he drew or indorsed the bill. (5) When the drawer or indorser sought to be charged has received an assignment of all the property of the acceptor as security against his liability. (6) When, after the exercise of reasonable diligence, notice of dishonor cannot be given to or does not reach the party sought to be charged. (7) By waiver express or implied.<sup>58</sup> A letter misdirected, when information is readily obtained, cannot be excused.<sup>59</sup>

§ 446. **Knowledge by drawer and indorser.**—The fact that a drawer or indorser of a bill knows that it has been dishonored does not dispense with the necessity for giving him notice of dishonor.<sup>60</sup> Proof of notice of non-payment is unnecessary.<sup>61</sup> The law of New York, requiring proof of notice by certificate, applies only to the notaries of that State. The seal of foreign notaries impressed upon some adhesive substance must accompany the certificate.<sup>62</sup>

§ 447. **Notary's certificate as evidence.**—To destroy the effect of the certificates of the notary as presumptive evidence, the party must positively deny a receipt of the notice. An affidavit denying receipt upon information and belief, will not answer the requirements of the statutes and cannot be treated as an affidavit.<sup>63</sup>

The Michigan statutes do not permit to be received as evidence the certificate of a notary public notice of non-acceptance or non-payment in any case in which a defendant shall

<sup>58</sup> Benjamin's Chalmers, p. 198.

<sup>61</sup> Bradfor v. Cooper, 1 La. Ann.

<sup>59</sup> Patterson Bk. v. Butler, 12 N. 325.

J. 238.

<sup>62</sup> Bank of Rochester v. Gray, 2

<sup>60</sup> Benjamin's Chalmers's Bills & Hill (N. Y.) 227.

Notes, p. 182; Juniata Bank v.

<sup>63</sup> Gawtrety et al. v. Doane, 51 N.

Hale, 16 Serg. & Rawle, 157; Lane Y. 84.

v. Bank, 9 Heisk. 419.

annex to his plea an affidavit denying the fact of having received such notice.<sup>64</sup>

§ 448. **Waiver** is the relinquishment of a right.

An acceptor's liability can only be discharged by payment, or other satisfaction, by release or by waiver.<sup>65</sup> One who indorses a promissory note, inserting over his signature a waiver of demand and notice, is not entitled to any demand and notice.<sup>66</sup>

A drawer waives notice of protest when he promises to pay a bill which the drawee had refused to pay.<sup>67</sup> Where an endorser of a note received effect from the maker, to the amount of the note, before it became due, he waived his right to notice.<sup>68</sup> A note payable at a bank, the indorser waives notice of protest.<sup>69</sup>

§ 449. **Waiver of notice, etc.**—A neglect on the part of the drawer to provide funds in the hands of the drawee, to meet the bill, amounts to a waiver of notice of protest.<sup>70</sup> The presentation of the bill at maturity may be waived by agreement.<sup>71</sup> An indorser may waive demand and notice by express words, or by implication of acts or conduct.<sup>72</sup>

§ 450. **Liability of drawer or indorser.**—The drawer of a bill of exchange engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be not so accepted and paid he will indemnify the holder, provided due notice of dishonor be given. Any person who signs a negotiable bill otherwise than as drawer or acceptor, *prima facie* incurs the liability of an indorser. Except an indorsement by way of receipt. The indorser of a bill is in the nature of a new drawer. The indorser of commercial paper is entitled to notice of protest and non-payment; if no notice is received by him he is not liable thereon.<sup>73</sup> The drawer or indorser of a dishonored bill is liable for damages at the following rates: (1) Inland bill. The amount of the bill with interest from

<sup>64</sup> *Sexton v. Perrigo*, 126 Mich. 542.

<sup>65</sup> *Byles Bills*, 315.

<sup>66</sup> 8 Cush. (Mass.) 157.

<sup>67</sup> *Byles Bills*, 264.

<sup>68</sup> *Corney v. Da Costa*, 1 Esp. 303.

<sup>69</sup> *Pres., Direc. &c of Birkshire Bk. v. Jones*, 6 Mass. 524.

<sup>70</sup> *Brower v. Rupert*, 24 Ill. 182.

<sup>71</sup> *Curtiss v. Martin*, 20 Ill. 557.

<sup>72</sup> *Sheldon v. Horton*, 43 N. Y.

93.  
<sup>73</sup> *Apple v. Lesser*, 93 Ga. 749.

(probably) the time of dishonor. (2) Foreign bill of exchange. The amount of the bill with interest, from the time of dishonor, and the notarial expenses, or if it be payable abroad, the re-exchange, interest and expenses. Re-exchange means the loss resulting from the dishonor of a bill of exchange in a country different from that in which it was drawn or indorsed.<sup>74</sup> A corporation is liable as indorser on commercial paper where notices of protest are addressed to it in its corporate name.<sup>75</sup> In the absence of special agreement successive indorsers on an accommodation note of a third person are liable in the same order as indorsers for value.<sup>76</sup>

A promissory note signed by the maker through fear of violence, snatched and carried away against his will, is not validly delivered.<sup>77</sup>

A blank endorsement on a note above or below that of the payee renders the indorser liable *prima facie* as maker.<sup>78</sup>

§ 451. **Liability of drawee and acceptor.**—When the drawee breaks his contract with the drawer by dishonoring his draft, the consequences reasonably resulting from the breach of contract constitute the measure of damages. The acceptor of a bill of exchange who dishonors it is liable for (1) the amount of the bill with interest (a) from the maturity thereof if the bill be payable on a day certain, or (b) from the time of presentment for payment if the bill be payable on demand. (2) As special damage, the notarial expenses consequent on dishonor, and (perhaps) the loss on re-exchange incurred by an indorser who has taken up or paid the bill.<sup>79</sup>

§ 452. **Liability of indorsers.**—If the holder of a note sends it to a bank or other agent for collection it is sufficient to hold prior indorsers if the agent gives notice of the dishonor in due time to his principal, and if he without delay transmits notice to the prior indorser.<sup>80</sup> An indorser on a note in the

<sup>74</sup> Benjamin's Chalmers, B. & N., pp. 218-224.

<sup>75</sup> Am. Nat. Bank v. Junk Bros., 94 Tenn. 624.

<sup>76</sup> Moore v. Cushing, 162 Mass. 594; Shaw v. Knox, 98 Mass. 214.

<sup>77</sup> Palmer v. Poor, 121 Ind. 135.

<sup>78</sup> Nat. Bk. of Bellows Falls v. Dorset Marble Co., 61 Vt. 106.

<sup>79</sup> Benjamin's Chalmers, pp. 211, 217, 218; Ilsley v. Jones, 12 Gray, 260.

<sup>80</sup> Lynn Nat. Bk. v. Smith, 132 Mass. 227, supported by Colt v. Noble, 5 Mass. 167; Church v. Barlow, 9 Pick. 547; True v. Collins, 3 Allen, 438; Eagle Bk. v. Hathaway, 5 Met. 212.

firm's name, subsequently dissolved, cannot deny the existence of the firm in order to save himself from liability. A dissolution of partnership has respect to the future only. The parties remain bound for all antecedent engagements.<sup>81</sup>

A note presented to the drawer when due, by the agent of the holder, is sufficient to hold the indorser.<sup>82</sup>

The indorser of an accommodation note is responsible for the payment, when taken in good faith for value by a bank.<sup>83</sup>

Successive indorsers of an accommodation note for a third party are liable in the same order as indorsers for value, in the absence of special agreement.<sup>84</sup>

Where the indorser signs a paper waiving demand, protest and notice of a note, he is an original promiser and not entitled to notice.<sup>85</sup>

§ 453. **Liability of holder.**—Where a check instead of being presented for payment in due course, is transferred and circulates through several hands, it is conceived that there is a distinction between the time of presentment necessary as against the original drawer, in the event of the banker's insolvency, and the time necessary to charge the person from whom the check was received.<sup>86</sup>

§ 454. **Liability of bank.**—The doctrine was established in New York at an early period and has since been maintained, that a bank receiving negotiable paper for collection, in the absence of an express agreement or recognized custom limiting its liability, stands in the attitude of an independent contractor, and that if, in the course of the performance, it employs a notary to present the paper for payment and give the proper notice to charge the parties, the notary is the agent of the bank, and not of the depositor or owner of the paper. The bank is therefore liable for his negligence. The same rule formerly prevailed in Louisiana and South Carolina, but has since been overruled. It appears to be approved in Indiana, and is unqualifiedly in New Jersey. It is also approved in

<sup>81</sup> Hubbard v. Matthews, 54 N. Y. 43.

<sup>82</sup> Ewen v. Wilbor, 99 Ill. App. 132.

<sup>83</sup> Agawam Nat. Bk. v. Downing, 169 Mass. 297.

<sup>84</sup> Moore v. Cushing, 162 Mass. 594.

<sup>85</sup> State Trust Co. v. Owen Paper Co., 162 Mass. 156.

<sup>86</sup> Byles on Bills, 21.

Kansas. But the weight of authority is believed to be that if the bank exercises due care in the selection of a competent notary, it is not liable for his neglect in the performance of the duty entrusted to him. Where, however, the bank employs a notary by the year, and takes from him a bond for the faithful discharge of his duties, he is to be regarded as an officer of the bank, and the bank will be liable for his negligence or default.<sup>87</sup>

A bank receiving commercial paper for collection, by placing it in the hands of a notary public for protest, is not liable for failure of the notary to perform his duty, under the code of Mississippi. The liability rests upon the notary and his sureties.<sup>88</sup> If no loss is sustained by reason of a notary's defective protest, no damages can be claimed against him.<sup>89</sup>

§ 455. **Liability of notary.**—A notary is liable for loss occasioned for his failure to make protest when it is required. He is liable when he neglects to give proper notice to all parties entitled to notice of dishonor. His position is the same as an agent in any other line. He can be held liable for mistakes, negligence and due diligence. He is liable for negligence in presenting or protesting negotiable papers.<sup>90</sup>

**Recovery** cannot be had against a notary for negligent omission to give notice of protest to an indorser where the holder could but would not resort to other grounds for charging the latter.<sup>91</sup>

§ 456. **Days of grace.**—Are extra days (usually three) allowed the drawer or maker of a bill of exchange or promissory note in which to meet the payment. They originated in the

<sup>87</sup> Mechem's Agency, Sec. 514; supported by *Ayrault v. Bank*, 47 N. Y. 570; *Allen v. Merchants Bank*, 22 Wend. 215; *Bank of Lindsberg v. Ober*, 31 Kas. 599; *Bird v. Bank*, 93 U. S. 96.

<sup>88</sup> *Tiernan v. Com'l Bank of Natchez*, 7 How. (Miss.) 648; *Bowling v. Arthur*, 34 Miss. 41.

<sup>89</sup> *Franklin v. Smith*, 21 Wend. 624.

<sup>90</sup> Mechem's P. O., Sec. 704; supported by *Allen v. Suydam*, 20

Wend. 321; *Exchange Nat. B'k v. Third Nat. Bank of N. Y.*, 112 U. S. 276; *Warren Bank v. Parker*, 8 Gray, 221; *Bowling v. Arthur*, 34 Miss. 41; *Dorchester & M. Bank v. New Eng. Bank*, 55 Mass. 177; *First Nat. B'k of M. v. German Bk.*, 44 L. R. A. 733.

<sup>91</sup> *Sutherland's Damages*, Sec. 90; supported by *Franklin v. Smith*, 21 Wendell (N. Y.) 624; *Emerling v. Graham*, 14 La. Ann. 289.

distance of travel consuming delay in presentation. They are being abolished in most of the United States as unnecessary, owing to rapid transit, telegraph and telephone communication.

The law of the place of payment must govern as to whether days of grace are allowed on commercial paper.<sup>92</sup> It is premature to bring an action on a promissory note on the last day of grace.<sup>93</sup> An instrument drawn payable at a future date is treated as a bill of exchange and is entitled to days of grace. These are being abolished in most states as useless.

§ 457. **Legal holidays.**—If a bill falls due on a Sunday or legal holiday, if entitled to grace, it is deemed to be due on the preceding day; if not entitled to grace, it is deemed to be due on the succeeding day. The computation of time is determined by the law of the place of payment if shown. In reckoning the twenty-four hours, non-business days must be excluded.<sup>94</sup>

§ 458. **Uniform negotiable instrument law.**—The following is a revision of the English Bills of Exchange Act of 1882, with such changes as adapt it to the existing American law. It was prepared by a committee of the American Bar Association. It has already been adopted by one-half the states of our Union.

### GENERAL PROVISIONS.

**Definition.**—This act shall be known as the Negotiable Instruments Law. In this act, unless the context otherwise requires: "Acceptance" means an acceptance completed by delivery or notification. "Action" includes counter-claim and set-off. "Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not. "Bearer" means the person in possession of a bill or note which is payable to bearer. "Bill" means bill of exchange and "note" means negotiable promissory note. "Delivery" means transfer of possession, actual or constructive, from one person to another. "Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. "Indorsement" means an indorsement completed by delivery. "Instrument" means negotiable instrument. "Issue" means the first delivery of the instrument, complete in form to

<sup>92</sup> Skelton v. Dustin, 92 Ill. 49.

<sup>94</sup> City Bank v. Cutler, 3 Pick.

<sup>93</sup> Bowen v. Newell, 8 N. Y. 190; 414; Avery v. Stewart, 2 Conn. 69; id., 13 N. Y. 290; Weisinger v. First Salter v. Burt, 20 Wend. 205. Nat. B'k, 106 Mich. 291.

a person who takes it as a holder. "Person" includes a body of persons, whether incorporated or not. "Value" means valuable consideration. "Written" includes printed, and "writing" includes print. THE PERSON "PRIMARILY" LIABLE on an instrument is the person who by the terms of the instrument is absolutely required to pay the same; all other parties are "secondarily" liable. REASONABLE TIME—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. TIME COMPUTED—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. APPLICATION—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof. LAW MERCHANT—In any case not provided for in this act the rules of the law merchant shall govern.

## TITLE I.

### NEGOTIABLE INSTRUMENTS IN GENERAL.

#### ARTICLE I.

##### FORM AND INTERPRETATION.

Section 1. **Form**—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer, (2) must contain an unconditional promise or order to pay a sum certain in money, (3) must be payable on demand, or at a fixed or determinable future time, (4) must be payable to order or to bearer, and (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. **The sum payable** is a sum certain within the meaning of this act, although it is to be paid, (1) with interest, or (2) by stated installments, or (3) by stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due, or (4) with exchange, whether at a fixed rate or at the current rate, or (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. **An unqualified order or promise to pay is unconditional**, within the meaning of this act, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount, or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. **An instrument is payable at a determinable future time**, within the meaning of this act, which is expressed to be payable, (1) at a fixed period after date or sight, or (2) on or before a fixed or determinable future time specified therein, or (3) on or at a fixed

period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

**Sec. 5. Additional provision not affecting negotiability**—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (1) authorizes the sale of collateral securities in case the instrument be not paid at maturity, or (2) authorizes a confession of judgment if the instrument be not paid at maturity, or (3) waives the benefit of any law intended for the advantage or protection of the obligor, or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.

**Sec. 6. Omissions; seal; particular money**—The validity and negotiable character of an instrument are not affected by the fact that (1) it is not dated, or (2) does not specify the value given, or that any value has been given therefor, or (3) does not specify the place where it is drawn or the place where it is payable, or (4) bears a seal, or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

**Sec. 7. Payable on demand**—An instrument is payable on demand, (1) where it is expressed to be payable on demand, or at sight, or on presentation, or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

**Sec. 8. Payable to order**—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order (1) a payee who is not maker, drawer, or drawee, or (2) the drawer or maker, or (3) the drawee, or (4) two or more payees jointly, or (5) one or some of several payees, or (6) the holder of an office for the time being. Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

**Sec. 9. Payable to bearer**—The instrument is payable to bearer (1) when it is expressed to be so payable, or (2) when it is payable to a person named therein or bearer, or (3) when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable, or (4) when the name of the payee does not purport to be the name of any person, or (5) when the only or last indorsement is an indorsement in blank.

**Sec. 10. Language**—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

**Sec. 11. Date**—Where the instrument or an acceptance or any in-

dorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement, as the case may be.

**Sec. 12. Post dated**—The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**Sec. 13. Undated; holder may insert date**—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**Sec. 14. Blanks may be filled by holder**—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given, and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given, and within a reasonable time.

**Sec. 15. Incomplete instrument not delivered**—Where an incomplete instrument has not been delivered, it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

**Sec. 16. Delivery**—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by, or under the authority of, the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

**Sec. 17. Ambiguous Language**—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount. (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof. (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued. (4) Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail. (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either, at his election. (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. (7) Where an instrument containing the words, "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

**Sec. 18. Liable for signature**—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

**Sec. 19. Signature by agent**—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

**Sec. 20. Liability of agent signing**—Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

**Sec. 21. A signature by "procuration"** operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

**Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant** passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

**Sec. 23. Where a signature is forged or made without the authority of the person whose signature it purports to be**, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

## ARTICLE II.

## CONSIDERATION.

Sec. 24. **Valuable consideration**—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. **What constitutes value**—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. **Holder for value**—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. **Holder has lien**—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. **Absence or failure of consideration** is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. **An accommodation party** is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

## ARTICLE III.

## NEGOTIATION.

Sec 30. **Negotiated; transferred**—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. **The indorsement** must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. **Indorsement entire**—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. **Indorsement special or blank**—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. **A special indorsement** specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. **The holder may convert a blank indorsement** into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. **An indorsement is restrictive** which either (1) prohibits the further negotiation of the instrument, or (2) constitutes the indorsee the agent of the indorser, or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. **Effect of restrictive endorsement**—A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument, (2) to bring any action thereon that the indorser could bring, (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. **A qualified indorsement** constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. **Where an indorsement is conditional**, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Sec. 40. **Indorsement payable to bearer**—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. **Payable to order**—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Sec. 42. **Drawn or indorsed to cashier**—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. **Wrong names**—Where the name of a payee or indorsee is

wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

Sec. 44. **Representative indorsement**—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. **Date of indorsement**—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Sec. 46. **Place of indorsement**—Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Sec. 47. **Negotiable until paid**—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. **The holder may at any time strike out any indorsement** which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. **Effect of transfer without indorsement**—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. **Where an instrument is negotiated back to a prior party**, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

#### ARTICLE IV.

##### RIGHTS OF THE HOLDER.

Sec. 51. **Holder may sue**—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 52. **A holder in due course** is a holder who has taken the instrument under the following conditions: (1) That it is complete and regular upon its face, (2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (3) that he took it in good faith and for value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. **A holder not in due course**—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. **Notice before full amount paid**—Where the transferee re-

ceives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**Sec. 55. Title defective**—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

**Sec. 56. Notice of defect**—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**Sec. 57. A holder in due course holds the instrument free** from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

**Sec. 58. When subject to the same defenses**—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

**Sec. 59. Every holder is deemed prima facie to be a holder in due course**; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

## ARTICLE V.

### LIABILITIES OF PARTIES.

**Sec. 60. The maker** of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

**Sec. 61. The drawer** by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

**Sec. 62. The acceptor** by accepting the instrument engages that he

will pay it according to the tenor of his acceptance; and admits (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.

**Sec. 63. Indorser**—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**Sec. 64. Irregular indorser**—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**Sec. 65. Warranty by delivery or indorsement**—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

**Sec. 66. General indorser**—Every indorser who indorses without qualification warrants, to all subsequent holders in due course, (1) the matters and things mentioned in subdivisions one, two, and three of the next preceding section and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

**Sec. 67. Liability of indorser**—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

**Sec. 68. Liable in order of indorsement**—As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

**Sec. 69. Where a broker or other agent negotiates an instrument** without indorsement, he incurs all the liabilities prescribed by section 65 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

## ARTICLE VI.

## PRESENTMENT FOR PAYMENT.

**Sec. 70. Want of demand on principal**—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

**Sec. 71. Where the instrument is not payable on demand**, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

**Sec. 72. Presentment for payment, to be sufficient**, must be made (1) by the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place, as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

**Sec. 73. Presentment for payment is made at the proper place:** (1) Where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

**Sec. 74. The instrument must be exhibited** to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

**Sec. 75. Where the instrument is payable at a bank**, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**Sec. 76. Drawer dead**—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence, he can be found.

**Sec. 77. Partners**—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**Sec. 78. Joint debtors**—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**Sec. 79. Presentment for payment is not required in order to charge the drawer** where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**Sec. 80. Presentment for payment is not required in order to charge an indorser** where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

**Sec. 81. Delay in making presentment for payment is excused** when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**Sec. 82. Presentment for payment is dispensed with:** (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.

**Sec. 83. The instrument is dishonored by non-payment** when (1) it is duly presented for payment and payment is refused or cannot be obtained, or (2) presentment is excused and the instrument is overdue and unpaid.

**Sec. 84. Persons secondarily liable**—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

**Sec. 85. Days of grace; maturity**—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon Saturday when that entire day is not a holiday.

**Sec. 86. Time; after date; sight; how computed**—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**Sec. 87. Where the instrument is made payable at a bank** it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**Sec. 88. Payment is made in due course** when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

## ARTICLE VII.

## NOTICE OF DISHONOR.

Sec. 89. **Notice to whom**—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. **Notice for whom**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. **Notice by agent**—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. **Effect of notice for holder**—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. **Effect of notice by party entitled to**—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. **When agent may give notice**—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. **When notice sufficient**—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Sec. 96. **Form of notice**—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. **Notice of dishonor may be given either to the party himself or to his agent in that behalf.**

Sec. 98. **When any party is dead**, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. **Where the parties to be notified are partners**, notice to

any one partner is notice to the firm, even though there has been a dissolution.

**Sec. 100. Notice to joint parties who are not partners** must be given to each of them, unless one of them has authority to receive such notice for the others.

**Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors,** notice may be given either to the party himself or to his trustee or assignee.

**Sec. 102. Notice may be given as soon as the instrument is dishonored;** and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

**Sec. 103. Where the person giving and the person to receive notice reside in the same place,** notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

**Sec. 104. Where the person giving and the person to receive notice reside in different places,** the notice must be given within the following times: (1) If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. (2) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

**Sec. 105. Where notice of dishonor is duly addressed and deposited in the post-office,** the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

**Sec. 106. Notice is deemed to have been deposited in the post-office** when deposited in any branch post-office or in any letter-box under the control of the post-office department.

**Sec. 107. Notice to subsequent party; time**—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

**Sec. 108. Where notice to be sent**—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

**Sec. 109. Notice of dishonor may be waived** either before the time

of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

**Sec. 110. Who affected by waiver**—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an endorser, it binds him only.

**Sec. 111. A waiver of protest**, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**Sec. 112. Notice of dishonor is dispensed with** when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**Sec. 113. Delay in giving notice of dishonor is excused** when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

**Sec. 114. Notice of dishonor is not required to be given to the drawer** in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

**Sec. 115. Notice of dishonor is not required to be given to an indorser** in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.

**Sec. 116. Where due notice of dishonor by nonacceptance has been given**, notice of subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

**Sec. 117. An omission to give notice of dishonor by nonacceptance** does not prejudice the rights of a holder in due course subsequent to the omission.

**Sec. 118. Protest**—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

## ARTICLE VIII.

### DISCHARGE OF NEGOTIABLE INSTRUMENTS.

**Sec. 119. How**—A negotiable instrument is discharged: (1) By payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional

cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

**Sec. 120. A person secondarily liable on the instrument is discharged:** (1) By any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

**Sec. 121. Where the instrument is paid by a party secondarily liable thereon,** it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of a third person, and has been paid by the drawer; and (2) where it was made or accepted for accommodation, and has been paid by the party accommodated.

**Sec. 122. The holder may expressly renounce his rights** against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

**Sec. 123. A cancellation made unintentionally,** or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

**Sec. 124. Where a negotiable instrument is materially altered** without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

**Sec. 125. What constitutes alteration—**Any alteration which changes (1) the date, (2) the sum payable, either for principal or interest, (3) the time or place of payment, (4) the number or the relations of the parties, (5) the medium or currency in which payment is to be made, or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

## TITLE II.

## BILLS OF EXCHANGE.

## ARTICLE I.

## FORM AND INTERPRETATION.

Sec. 126. **A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.**

Sec. 127. **A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.**

Sec. 128. **A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.**

Sec. 129. **An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.**

Sec. 130. **When bill may be treated as a promissory note**—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Sec. 131. **Referee in case of need**—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

## ARTICLE II.

## ACCEPTANCE.

Sec. 132. **How made**—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. **The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused, may treat the bill as dishonored.**

**Sec. 134. An acceptance on separate paper**—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**Sec. 135. Promise to accept**—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

**Sec. 136. The drawee is allowed twenty-four hours** after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

**Sec. 137. Liability of drawee for destroying bill**—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

**Sec. 138. Acceptance of incomplete bill**—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**Sec. 139. An acceptance is either general or qualified.**—A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

**Sec. 140. General acceptance**—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

**Sec. 141. Qualified acceptance**—An acceptance is qualified, which is: (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.

**Sec. 142. Rights of parties as to qualified acceptance**—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

## ARTICLE III.

## PRESENTMENT FOR ACCEPTANCE.

Sec. 143. **Presentment for acceptance must be made:** (1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. **Failure to present releases drawer and indorsers**—Except as herein otherwise provided, the holder of a bill, which is required by the next preceding section to be presented for acceptance, must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawer and all indorsers are discharged.

Sec. 145. **Presentment; how made**—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only. (2) Where the drawee is dead, presentment may be made to his personal representative. (3) Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. **Days for presentation**—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

Sec. 147. **Time insufficient**—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

Sec. 148. **Presentment for acceptance is excused**, and a bill may be treated as dishonored by nonacceptance, in either of the following cases: (1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground.

**Sec. 149. A bill is dishonored by nonacceptance:** (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained, or (2) when presentment for acceptance is excused and the bill is not accepted.

**Sec. 150. Duty of holder when not accepted**—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

**Sec. 151. Rights of holder when not accepted**—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

#### ARTICLE IV.

##### PROTEST.

**Sec. 152. Protest necessary**—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

**Sec. 153. How made**—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**Sec. 154. By whom**—Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**Sec. 155. When to be made**—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**Sec. 156. Where made**—A bill must be protested at the place where it is dishonored, except that when a bill, drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**Sec. 157. Nonacceptance and nonpayment**—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

**Sec. 158. Protest before maturity—insolvent**—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder

may cause the bill to be protested for better security against the drawer and indorsers.

**Sec. 159. Protest is dispensed with** by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**Sec. 160. Where a bill is lost or destroyed** or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

## ARTICLE V.

### ACCEPTANCE FOR HONOR.

**Sec. 161. When may be**—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**Sec. 162. How**—An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**Sec. 163. When deemed for drawer**—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**Sec. 164. The acceptor for honor** is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**Sec. 165. The acceptor for honor by such acceptance** engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

**Sec. 166. Maturity when payable after sight**—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

**Sec. 167. Protest when accepted for honor**—Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

**Sec. 168. Presentment for payment to the acceptor for honor** must

be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity. (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

**Sec. 169. Delay excused**—The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

**Sec. 170. When dishonored must be protested**—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

## ARTICLE VI.

### PAYMENT FOR HONOR.

**Sec. 171. Who may make.**—Where a bill has been protested for nonpayment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

**Sec. 172. How made.**—The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or from an extension to it.

**Sec. 173. Declaration before payment.**—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

**Sec. 174. Preference of parties offering to pay.**—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

**Sec. 175. Effect on subsequent parties.**—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

**Sec. 176. Where the holder of a bill refuses to receive payment *supra* protest,** he loses his right of recourse against any party who would have been discharged by such payment.

**Sec. 177. Rights of payer for honor.**—The payer for honor on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

## ARTICLE VII.

### BILLS IN A SET.

**Sec. 178. Bills in set constitute one bill.**—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

**Sec. 179. Rights of holders of different parts**—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

**Sec. 180. Where the holder of a set indorses two or more parts to different persons** he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

**Sec. 181. The acceptance may be written on any part and it must be written on one part only.** If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

**Sec. 182. When the acceptor of a bill drawn in a set pays it** without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

**Sec. 183. Payment of one discharges all**—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

### TITLE III.

#### PROMISSORY NOTES AND CHECKS.

**Sec. 184. Note defined**—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

**Sec. 185. Check defined**—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act, applicable to a bill of exchange payable on demand, apply to a check.

**Sec. 186. A check must be presented for payment** within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**Sec. 187. Where a check is certified by the bank** on which it is drawn, the certification is equivalent to an acceptance.

**Sec. 188. Where the holder of a check procures it to be accepted or certified** the drawer and all indorsers are discharged from liability thereon.

**Sec. 189. A check of itself does not operate as an assignment** of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

## STATUTORY REQUIREMENTS.

§ 459. **Alabama**—**PROTEST**—Damages, cover exchange in this country. For foreign currency add exchange. **NOTICE OF PROTEST**—Mail to where party resided, personal notice not necessary. **DAYS OF GRACE**—Are allowed. **HOLIDAYS**—Sundays, Jan. 1, Feb. 22, April 26, July 4, Thanksgiving, Good Friday and Mardi Gras, Dec. 25, first Monday in September. If any fall on a Sunday then the following Monday; paper entitled to days of grace or subject to protest falling due on a holiday, must be taken as due on the next succeeding business day. Legal interest, 8 per cent.

§ 460. **Alaska**—**PROTEST**—Oregon laws govern. **HOLIDAYS**—Oregon laws govern. **DAYS OF GRACE**—Allowed.

§ 461. **Arizona**—See Uniform Negotiable Instrument Law. Days of grace abolished. When due on Sunday or a holiday the instrument is due on the next succeeding business day. **HOLIDAYS**—Sundays, Jan. 1, Feb. 22, May 30, July 4, Dec. 25, State election days, Thanksgiving day, Arbor day. If any of these fall on Sunday, the following Monday is observed. Compute by excluding the first and including the last day unless a holiday. Legal interest, 6 per cent; may agree in writing for a larger rate.

§ 462. **Arkansas**—**PROTEST**—A refusal to write the acceptance on a bill subjects it to protest. A failure to return the bill, accepted or nonaccepted, within twenty-four hours, is deemed an acceptance. Notice of Protest can be mailed when the parties reside at different places. By the mail of the day after the dishonor, if the mail is not closed before. It may be sent by messenger or given personally, but must reach the party at farthest on the same day it would have reached him by mail. (*Minehart v. Handlin*, 37 Ark., 276.) **DAYS OF GRACE**—Are allowed. **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, July 4, Thanksgiving day, Dec. 25. Bills of exchange, drafts and promissory notes falling due on these days shall be deemed as due the preceding day, and noted and protested then, provided it shall not be necessary for the holder of such to give notice of dishonor until the day succeeding the holiday. **DAMAGES**—For protested bills of exchange drawn or negotiated within the state, for value received. 1st. If drawn on any person at any place within the State, 2 per cent on the principal. 2nd. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri or any Ohio river point, 4 per cent on the principal. 3rd. If payable within the United States other than before stated, 5 per cent on the principal. 4th. If payable without the United States, 10 per cent on the principal. If for value received, and payable to order or bearer, drawn on any person at any place within the State, accepted and protested for nonpayment. 1st. Drawn by any person at any place within this State, 2 per cent on principal. 2nd. If drawn outside this State but within the United States, 6 per cent on principal. 3rd. If drawn outside the United States, at 10 per cent on principal. In addition, pro-

test fees and interest at 10 per cent per annum on the principal are allowed from the date of protest until paid. Right of action allowed if properly protested. Legal interest 6 per cent; can in writing contract at 10 per cent.

§ 463. **California**—**PROTEST**—Must be made by a notary, if none can be found, by a reputable person in the presence of two witnesses. Must be in writing, giving copy of the bill or annexing the original, the manner made, presence or absence of the drawee or acceptor, the refusal, the reason, finally protesting against all parties to be charged. In the place presented for payment or acceptance on the day of presentment. **NOTICE**—Can be given only by notice of protest, by the notary protesting. **DAYS OF GRACE**—Abolished. **HOLIDAYS**—Sunday, 1st day of January, 22nd day of February, 30th day of May, 4th day of July, 9th day of September, 1st Monday of September, 25th day of December, 1st days of election in the State, every Fast, Thanksgiving or holiday appointed by the President of the United States or the Governor of the State. If these days fall on a Sunday then the next day, Monday, is a holiday. Legal interest 7 per cent; a higher rate permitted if in writing.

§ 464. **Colorado**—(See Sec. 458 Uniform Negotiable Instrument Law.) **HOLIDAYS**—In cities of 100,000 population, during June, July and August, Saturdays after 12 o'clock, Sundays, January 1st, February 12, 22, May 30, July 4, December 25, Thanksgiving Day, 1st Monday in September, November election day. If any of these days fall on a Sunday, then the Monday following. When the day of maturity falls upon Sunday, a holiday or part holiday, the instrument is payable on the next succeeding business day. If payable on Saturday it must be presented on the next succeeding business day, except when payable on demand, may, at the option of the holder, be presented for payment before twelve o'clock noon. The day of date is not a part of the time. Legal interest 8 per cent. Limitation of action on promissory notes is 6 years.

§ 465. **Connecticut**—(See Sec. 458 Uniform Negotiable Instrument Law.) **HOLIDAYS**—January 1, February 12, 22, May 30, July 4, September 1st Monday, December 25, Sundays, Saturday after 12 o'clock, or any day appointed by the President or Governor, as Thanksgiving or fasting or religious observance. When any of these come on Sunday the following Monday is to be observed. Legal interest 6 per cent.

§ 466. **Delaware**—**PROTEST AND NOTICE**. Sufficient to mail. **HOLIDAYS**—In the City of Wilmington, Saturday afternoon after 12 o'clock is a legal holiday, bills of exchange, notes, drafts, checks or other negotiable instruments falling due at that time, shall be due on the next succeeding secular day, providing no one shall incur any liability for not presenting. December 25, July 4, Thanksgiving Day, January 1, February 22, May 30, 1st Monday in September. If any of these days fall on Sunday, then the following Monday will be observed. Bills, notes, checks and other negotiable instruments falling due on these days will be due the Saturday preceding. In New Castle county, Saturday afternoons will be holiday after 12 o'clock from June 1st to September

1st, inclusive, notes, bills of exchange, checks and drafts falling due then must be presented before 12 o'clock. **DAYS OF GRACE**—All checks, notes, drafts or bills, foreign or inland, payable without time or at sight, are payable without grace. All drafts or bills of exchange payable at a future time, are entitled to grace, but no checks. Damages on foreign protested bills of exchange, 20 per cent. Legal interest 6 per cent. Action on note limited to 6 years.

§ 467. **District of Columbia**—See Sec. 458 Uniform Negotiable Instrument Law. **HOLIDAYS**—January 1, July 4, December 25, February 22, Presidential Inauguration day, May 30, Thanksgiving Day, 1st Monday in September. Any of these days falling on a Sunday, then the succeeding day shall be observed, and any notes, drafts, checks or commercial or negotiable paper falling due on these days shall be deemed as maturing on the day next succeeding. Every Saturday which under existing laws shall not become a legal holiday in its entirety, in the District of Columbia, shall therein be a legal holiday, from twelve o'clock at noon, for all purposes respecting the presentation for payment or acceptance or the protesting or giving notice of the dishonor of bills of exchange, bank checks, drafts, promissory notes, and all commercial paper whatsoever, whether made in or beyond the said District or whether made before or after the passage of this act, and all such bills of exchange, bank checks, drafts, promissory notes, and commercial paper which otherwise would be due and payable or presentable for acceptance or payment in said District, on such half holiday Saturday, shall therein be due and payable or presentable for acceptance or payment on the secular or business day next succeeding. Provided, however, that any acceptance or payment thereof with interest thereon to said date when the same bears interest made on such half holiday Saturday, before twelve o'clock noon, shall be lawful. (U. S. Rev. Stat. Supp., vol. 2, pp. 136-7.) Legal interest 6 per cent. Action on promissory notes limited to 3 years.

§ 468. **Florida**—(See Sec. 458 Uniform Negotiable Instrument Law.) **HOLIDAYS**—Sunday, April 26, January 19, January 1, February 22, July 4, December 25, general election day, Thanksgiving. Whenever any of these days fall on a Sunday the Monday following to be observed. All bills, notes and checks falling due on these days are presentable on the Saturday preceding. **DAMAGES**—On foreign protested bills, 5 per cent. Legal interest 8 per cent. Action on notes limited to 5 years.

§ 469. **Georgia**—**INDORSER**—Anyone indorsing or transferring a negotiable instrument may limit their responsibility by express restrictions. Every transferer of a negotiable instrument warrants, unless otherwise agreed by the parties, that he is the lawful holder, and that the instrument is genuine. If there are several indorsers each is liable to subsequent ones; or the indorser will not be held liable thereon; but it shall not be necessary to protest in order to bind indorsers, except, when a paper is made payable on its face at a bank or banker's office, or when it is discounted at a bank or banker's office, or

when it is left at a bank or banker's office for collection. Damages on bills of exchange payable out of this State and in the United States, when returned protested for nonacceptance or nonpayment, the holder shall be entitled to recover of the drawer and indorsers in the first case and the acceptor also in the latter case, in addition to the principal, interest and protest fees, five per cent damages on the principal. If without the United States, ten per cent. The indorser may be sued in the same action, and in the same county with the maker, or drawer, or acceptor. The holder of a negotiable instrument receiving the same before due, without notice of any defect or defense, shall be protected from any defenses set up by the maker, acceptor or indorser, except non est factum, gambling or immoral and illegal considerations, or fraud in its procurement. **PROTEST AND NOTICE**—When bills of exchange and promissory notes are made for negotiation or intended to be negotiated at a chartered bank, and are not paid at maturity, notice of nonpayment and of the protest for nonpayment or nonacceptance must be given to the indorsers within a reasonable time, either personally or by post (if the residence of the indorser be known). **DAYS OF GRACE** abolished. **HOLIDAYS**—January 1, January 19, February 22, April 26, July 4, December 25, 1st Monday in September, Thanksgiving Day or any other declared by the law of Georgia to be a public holiday, shall, as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, be treated and considered as the first day of the week, called Sunday, and as public holidays; such bills, checks and notes, otherwise presentable on said days, shall be deemed to be presentable on the secular or business day next preceding, except, when such holiday falls upon Sunday, the Monday next following shall be deemed a public holiday, and papers due on such Sunday shall be payable on the Saturday preceding; papers otherwise payable on such Monday, shall be payable on the Tuesday thereafter. Whenever these days shall fall on Saturday, papers due on the Sunday following shall be payable on the Monday succeeding. Whenever either of said days shall fall on Monday, papers which would otherwise be payable on that day, shall be payable on the Tuesday next succeeding. Paper payable on demand is due immediately. When no time is specified for the payment of a bill or order, it is due as soon as presented and accepted. **DAMAGES** on bills payable outside the State, protested, 5 per cent; outside the United States, 10 per cent in addition to principal, interest and protest fees. Legal interest 7 per cent; may permit 8 in writing. Action on notes limited to 6 years.

§ 470. **Hawaiian Islands**—**HOLIDAYS** January 1, 17, June 11, July 4, 3rd Saturday of September, November 28, December 25. **DAYS OF GRACE**—Three allowed in all bills. If they fall on Sunday then only two days. Legal interest 9 per cent; on written contract  $2\frac{1}{2}$  per cent per month is permitted.

§ 471. **Idaho**—See Sec. 458 Uniform Negotiable Instrument Law. **PRESENTMENT FOR ACCEPTANCE**—Must be made, where the bill is payable after sight or in any other case where presentment for ac-

ceptance is necessary in order to fix the maturity of the instrument; or where the bill expressly stipulates that it shall be presented for acceptance; or where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no case is presentment for acceptance necessary in order to render any party to the bill liable. PROTEST may be made by a notary public; or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. Must be made on the day of its dishonor unless delay is excused as provided for by the law. Protest must be made where the bill is dishonored unless drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no other presentment for payment to, or demand on, the drawee is necessary. A bill protested for nonacceptance may be protested for nonpayment. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the delay ceases the bill must be protested with reasonable diligence. NOTICE of dishonor must be given to the drawer and to each indorser, those to whom it is not given are discharged. It may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. DAYS OF GRACE abolished. HOLIDAYS, Sunday, January 1, February 22, July 4, December 25, election days throughout the State, first Friday in May, Thanksgiving or Fast days appointed by the President or Governor. Any act of a secular nature falling upon these days may be performed upon the next business day. Legal interest 7 per cent; permit 12 per cent on written contract. Action on note limited to 5 years.

§ 472. **Illinois—PRESENTMENT.** The holder of the instrument, or his authorized agent (which a notary would be) is the proper person to present the same for acceptance. **PLACE**—Presentment for acceptance may be made either at the drawee's place of business or at his dwelling. **BY WHOM**—A demand of payment must be made on every bill, note or other written negotiable instrument before the same can be protested, notary publics to perform this duty. **MANNER**—A proper presentment for acceptance is the taking of the bill to the drawee and asking his acceptance. There is no prescribed form. **TIME**—A month is a calendar month, and a year twelve calendar months; a day shall be considered a thirtieth part of a month. **HOLIDAYS**—The first day of January, New Year's Day; twenty-second day of February, Washington's birthday; thirtieth day of May, Decoration Day; Fourth of July, Declaration Day; twenty-fifth day of December, Christmas day; first Monday of September, Labor Day; twelfth day of February, Lincoln's birthday; first day of each week, Sunday; any day appointed by the Governor of the State or the President of the United States, as a day of fast, or Thanksgiving, are declared legal

holidays, and for all purposes whatsoever as regards giving notice, etc., of the dishonor of negotiable instruments are to be considered the same as Sundays. All notices falling due or maturing on these days, shall be deemed as due on the day following, and when two or more of these days come together, or immediately succeed each other, then upon the day following the last of such days. DAYS OF GRACE—Are abolished. PROTEST—Notaries public are authorized to protest for nonpayment or acceptance, all negotiable instruments. DAMAGES—On bills of exchange, drawn or indorsed within this State, and payable without the limits of the United States, is duly protested for nonacceptance or nonpayment, the drawer or indorser on notice being given, shall pay said bill with legal interest, from the time due, until paid, and ten per cent damages in addition, together with the costs and charges of protest. Drawn upon any person, out of this State, but within the United States, presented for acceptance or payment and protested, the drawer or indorser thereof, notice being given, shall pay said bill, with legal interest from the time due until paid, with cost and charges of protest, and in case suit has to be brought, five per cent damage in addition. RECORD—Notary publics shall keep a correct record of all notices, and the time and manner served, names of all parties to whom directed, the description and amount of the instrument protested. EVIDENCE—Said record, or copy certified, under the hand and seal of the notary public or county clerk, having the custody of the original record, shall be competent evidence to prove the facts stated, but the same may be contradicted by other competent evidence. PROTESTS—Notices—Every notary public in this State making a protest shall give notice in writing to the maker, and to each indorser, on the day protest is made, or within forty-eight hours from the time of such protest; notary public to personally serve the notice, provided he or they reside in the town, precinct, city or village where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, precinct, city or village, then the notice may be forwarded by mail or other safe conveyance, if the city where the protest is made contains ten thousand or more inhabitants, the notice may be forwarded by mail. MONEY NOTES—The rights of the lawful holders of promissory notes payable in money, and the liabilities of all the parties to or upon said notes shall be made the same as that of like parties to inland bills of exchange according to the custom of merchants. Every assignor of every other note, bond, bill or other instrument in writing shall be liable to the action of the assignee or lawful holder thereof, if such assignee or lawful holder shall have used due diligence by the institution and prosecution of a suit against the maker thereof, for the recovery of the money or property due thereon, or damages in lieu thereof. But if the institution of such suit would have been unavailing, or the maker had absconded or resided without or had left the State when such instrument became due, such assignee or holder may recover against the assignee as if due diligence by suit had been used. PERSONS severally LIABLE upon bills of exchange or promissory

notes, payable in money, may all, or any of them severally, be included in the same suit at the option of the plaintiff, and judgment rendered in said suit shall be without prejudice to the rights of the several defendants as between themselves.—S. & C. Anno. Ill. Statutes, 1896. Legal interest, 5 per cent; permit 7 per cent in writing. Action on note limited to 10 years.

§ 473. **Indian Territory**—ACCEPTANCES to be in writing and on the bill, an unconditional promise in writing to accept a bill before it is drawn shall be deemed an actual acceptance in favor of every person who in good faith received the bill for a valuable consideration. Damages may be recovered on refusal to accept when previously promised. By destroying a bill, or refusal to accept it twenty-four hours after its receipt, is considered an acceptance. PROTEST by notary. DAYS OF GRACE, allowed. NOTICE by notary. Protest of an inland bill or a promissory note is not necessary. Is if foreign. HOLIDAYS—Dec. 25, July 4. Instruments falling due on these days or Sundays are considered due the preceding day. Notice to be given on the day following the Sunday or holiday. Damages in bills protested drawn on party in this State, 2 per cent on principal. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri, or any point on the Ohio river, 4 per cent. Any other place in United States, 5 per cent; out of the United States, 10 per cent. If drawn by anyone in this State, 2 per cent; if drawn by anyone in another State, 6 per cent; if drawn by anyone out of the United States, 10 per cent. In addition, costs of protest and 10 per cent interest. The holder has right of action at law. LEGAL INTEREST 6 per cent, permit 10 per cent in writing. ACTION on note limited to 5 years.

§ 474. **Indiana**—PROTESTS and NOTICES of to be made and given by notaries according to custom of merchants. Bank notes held by an individual on one day presented for protest shall be counted, sealed in a package, and forwarded to the State Auditor and entitled to but one protest. Bank officers or employes cannot act as notaries. Any assignee, having used due diligence in the premises, shall have his action against his immediate or any remote indorser; and in suit against a remote indorser, he shall have any defense which he might have had in a suit brought by his immediate assignee. DAYS OF GRACE—Three are allowed. A promise to pay money without relief from valuation laws, judgment shall be rendered and execution had accordingly. HOLIDAYS—Sundays, Jan. 1, July 4, Dec. 25, Thanksgiving day, Feb. 22, May 30, first Monday in September, general, national or State election days. Negotiable or commercial paper maturing thereon shall be deemed as having matured on the day previous, and when the legal holiday comes on Sunday, the day following shall be the holiday. If it fall on Monday, then the instrument shall be due the previous Saturday. ATTORNEY'S FEES—Agreements as to attorney's fees depending upon conditions as set forth in any bill of exchange, acceptance, draft, or other written evidence of indebtedness, are illegal and void. DAMAGES on protest bills drawn or negotiated

in this State, on persons in other states, 5 per cent. Outside the United States, 10 per cent. Interest from date of protest. If upon notice of protest and demand, the principal is paid, the cost of protest only to be charged. Holder must have given a valuable consideration. Damages do not apply to notes discounted at bank and protested for non-payment. **LEGAL INTEREST** 6 per cent, permit 8 in writing. **ACTION** on note limited to 10 years.

On any bill drawn or negotiated in this State, and payable at any place without the State, but in regard to which it shall appear that it was not to be presented for acceptance or payment at that place, if means were provided for its discharge within the State, no damages or charges for protest shall be allowed. The holder of any note or bill of exchange, negotiable by the law merchant or by the law of this State, may institute one suit against the whole or any number of the parties liable to such holder, but shall not at the same term of court, institute more than one suit on said note or bill. Provided, that no judgment shall be rendered in such suit against any maker of such note, drawer or acceptor of such bill unless suit is brought in the county where one or more of such makers, drawers or acceptors reside at the time such suit is begun.

§ 475. **Iowa**—See Sec. 458 Uniform Neg. Inst. Law. **DAYS OF GRACE**—Abolished, only demand may be made on any of the three days following maturity. **HOLIDAYS**—Sunday, January 1, May 30, July 4, first Monday in September, Thanksgiving Day, December 25, Bills of exchange, checks, promissory notes and any bank or mercantile paper falling due on these days, is due on the succeeding day. **LEGAL INTEREST** 6 per cent, permit 8 per cent in writing. **ACTION** on note limited to 10 years.

§ 476. **Kansas**—**BONDS, BILLS OF EXCHANGE**, promissory notes, drawn for any sums of money certain, and payable to any person or order, or bearer, are negotiable by indorsement, if payable to order, and by delivery if payable to bearer. Any indorsee or holder may institute and maintain suit for the recovery of the money due thereon against the maker, drawer or obligor or the indorser, having first used due diligence to collect the same. **ACCEPTANCE** to be in writing on the bill accepted. A destruction or withholding of the bill after presentation for acceptance shall be deemed an acceptance. Suit may be brought jointly or severally against the drawers, indorsers, makers or obligors on a protested bill for the principal, damages, interest and protest charges. **PROTEST AND NOTICE**—Every notary public protesting, shall give immediate notice in writing to each party protested against, by depositing the same in the mail, postage paid, directed to the party at his reputed place of residence, and shall deliver to the holder a certificate of the time, manner and service, and parties protested against and notified, which shall be due evidence of the facts stated until the contrary is shown. **GRACE**—Three days' grace are allowed. **HOLIDAYS**—Sundays, July 4, December 25, January 1, February 22, May 30, Thanksgiving Day and the first Monday in September, are

legal holidays. If any of these fall upon a Sunday the day succeeding will be observed. Bills, notes, drafts and checks falling due on these days, with days of grace added, will be deemed due on the next preceding business day. **LEGAL** interest 10 per cent. **ACTION** on notes limited to 5 years.

§ 477. **Kentucky**—**BILLS, NOTES AND CHECKS** payable in bank notes or currency, or other funds, wheresoever drawn or payable are deemed negotiable, and treated as if drawn for money, except as to the value of the currency in which they are payable. **PROTEST** to be made by a notary. **NOTICE** to be sent to all parties interested or liable. When their residence is unknown, notices to be sent to the holder of the paper. Must state in the protest the names of parties to whom sent, time and manner of sending. Protest under the seal of a notary for non-acceptance or non-payment is prima facie evidence of its dishonor. A false statement of protest or notice made by notary subjects him to imprisonment from one to five years. A promissory note made payable to the obligor or to his order, signed on the back by him, and delivered, is a promise to pay at maturity to the party to whom it is delivered. Such party may fill in the blank with the words of promise, and recover thereon as if he had been the payee. Such note is assignable. **DAYS OF GRACE**—None. **HOLIDAYS**—Feb. 22, May 30, July 4, first Monday in September, Dec. 25, Thanksgiving day, and shall be treated as Sundays. If any of these fall upon a Sunday the day following shall be observed. All notes, bills, drafts, checks, etc., falling due on these days, shall be deemed due or to be presented for acceptance or payment or protested or notice given, on the Saturday previous. **LEGAL** interest 6 per cent. **ACTION ON NOTES** limited 5 years.

§ 478. **Louisiana**—No obligations for the payment of money, made within this State, shall be received as evidence of a debt when the whole sum shall be expressed in figures, unless the same shall be accompanied by proof that it was given for the sum expressed. The cents may be in figures. **PROTEST**—New Orleans notaries protest throughout the parish. If no notary can be found, protest may be made in the presence of two witnesses, residents of the parish. They to certify and subscribe to same. Notaries in New Orleans can appoint deputies to assist them, notary to be responsible for their acts. The certificate to state demand, manner, circumstances, manner of service of notice, etc. Same to be evidence of the facts stated. **NOTICE** of protest to be mailed to parties residing elsewhere may be addressed to the place indicated on the bill or note, if no other address is known. **DAYS OF GRACE** are allowed on other than drawn at sight. **HOLIDAYS**—Jan. 1, Feb. 22, Mardi Gras, in New Orleans, July 4, Dec. 25, Sundays, June 3, Nov. 1, Thanksgiving Day (as designated by the President), first Monday in September, Saturdays after 12 o'clock, and Good Friday. Bills falling due on these days shall be deemed due the following business day. **DAMAGES** on protested bills—If drawn and payable in foreign countries, \$10 per hundred; if

drawn and payable in any other State in the United States, \$5 per hundred. Damages are in lieu of interest, protest, and all other charges, but the holder shall be entitled to demand and recover lawful interest and damages from the time of protest. If the amount of the bill is expressed in U. S. money the rate of exchange has no consideration. **LEGAL INTEREST** 8 per cent, Judicial banks special 5 per cent.

§ 479. **Maine**—**ACCEPTANCE**—To be in writing and signed. **PROTEST** and notice—Notary may, when requested, protest commercial paper, and notify each party liable on same under his signature and official seal. **DAYS OF GRACE** are abolished. **HOLIDAYS**—Sundays, Thanksgiving day, Jan. 1, Feb. 22, May 30, July 4, Dec. 25, first Monday in September, and Saturdays after twelve o'clock. Any note, draft, check or bill of exchange falling due on these days shall be payable or presentable on the succeeding secular or business day. **LEGAL INTEREST** 6 per cent. **ACTION** on note limited to 5 years, witnessed notes to 20 years.

§ 480. **Maryland**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—Jan. 1, Feb. 22, July 4, Dec. 25, Good Friday, general and congressional election days throughout the State, May 30, Thanksgiving day. Any of these days falling on a Sunday, the day following shall be observed. All bills, notes, drafts and checks due or presentable on these days shall be deemed presentable the day preceding. Saturday afternoon is a legal holiday for the City of Annapolis. All negotiable paper falling due or protested on that day will be deemed due the following business day. **DAMAGES** on a bill of exchange drawn in this State on persons in other States, protested, 8 per cent, with costs of protest and legal interest from protest. An indorser paying same can recover with interest. On persons in foreign countries, 15 per cent on the principal, with protest costs and legal interest from protest. **LEGAL INTEREST** 6 per cent. **ACTION ON NOTES** limited to 6 years.

§ 481. **Massachusetts**—See Sec. 458 Uniform Neg. Inst. **DAYS OF GRACE** are allowed on bills of exchange, and drafts payable in the State at sight only. **HOLIDAYS**—Christmas day, Thanksgiving day, Feb. 22, May 30, July 4, first Monday of September, April 19. When these occur on Sunday, the following day is a legal holiday. Promissory notes, checks, drafts or bills of exchange falling due on Sunday or a legal holiday shall be payable and presentable on the next succeeding business day, except those payable on demand may be presented before twelve o'clock on Saturday when that entire day is not a holiday. **DAMAGES** on a protested bill drawn or indorsed within the State and payable beyond the limits of the United States, 5 per cent at current rate of exchange at time of demand, with interest from date of protest, in full for all damages, charges and expenses. If payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York, 2 per cent; if in New Jersey, Pennsylvania, Maryland, or Delaware, 3 per cent; if in Virginia, West Virginia, North Carolina,

South Carolina, or Georgia, or in the District of Columbia, 4 per cent; if in any other State, 5 per cent. The rate of damages on a sum of money not less than \$100, payable not less than 75 miles distant from the place where drawn or indorsed, and not accepted, shall be 1 per cent in addition to the principle and its interest. **LEGAL INTEREST** 6 per cent, permit 7 per cent. **ACTION** on note limited to 6 years.

§ 482. **Michigan**—**PROTEST** and notice—Notaries public to protest and give notice to interested parties on commercial papers according to the law of nations and commercial usage. Same under notary's hand and seal is presumptive evidence of the fact. Notices of protest to be mailed properly directed. Foreign protested bills are payable at the current rate of exchange at time of demand. Circulating bank notes may be protested by notary at the instance of the holder. Fee for protesting to be paid by party having them protested. **DAYS OF GRACE** allowed on all bills, notes and drafts not payable on demand, nor on any bank or banker or stating exact time of payment. Acceptance to be in writing. **HOLIDAYS**—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, Dec. 25, Thanksgiving day, Saturday after 12 noon. Any of these days falling on Sunday, the following Monday shall be observed. Notes, bills of exchange, or checks falling due on these days shall be deemed due on the next succeeding secular day. **DAMAGES** on, 5 per cent, with interest. Damages on bills within the U. S., viz.: Wis., Ill., Ind., Pa., Ohio, N. Y., 3 per cent, with interest and costs; Mo., Ky., Me., N. H., Vt., Mass., R. I., Conn., N. J., Del., Md., Va., and D. C., 5 per cent, with interest and costs; other States, etc., 10 per cent, with interest and costs. **LEGAL INTEREST** 5 per cent, permit 7 per cent in writing. **ACTION** on note limited to 6 years.

§ 483. **Minnesota**—**DEMAND NOTES**—A demand made at the expiration of sixty days from the date thereof without grace, or at any time within that term, shall be deemed a reasonable time. No presentment of such note to the promiser and demand of payment shall charge the indorser, unless made on or before the last day of said term of sixty days. **ACCEPTANCE** to be in writing. **NOTICE OF PROTEST** to be immediately mailed to each party protested against, directed to their reputed place of residence. Protest to state time and manner of service of notice. Record to be kept of same. **DAYS OF GRACE** abolished. **HOLIDAYS**—Sunday, Thanksgiving day, first Monday in September, first Tuesday after the first Monday of November in each even-numbered year, Dec. 25, Jan. 1, Feb. 22, July 4, May 30, Feb. 12, or the following day when either of the last six occur on Sunday. Bills, notes, drafts and contracts due or payable on these days shall be payable or performable upon the business days next succeeding, and in case of non-payment or non-fulfilment, shall be noted and protested upon such succeeding day; and notice of the dishonor, non-payment or non-fulfilment must be given that day. **DAMAGES** on bills of exchange drawn or endorsed in this State, and payable without the U. S., protested, 10 per cent, together with interest from time of protest. If payable in the U. S., 5 per cent, with legal interest, costs and charges.

Due notice being given in both. **LEGAL** interest 6 per cent, permit 10 per cent in writing. **ACTION** on a note limited to 6 years.

§ 484. **Mississippi**—**ACCEPTANCE** of a bill of exchange must be in writing, duly signed; the holder may require it to be written on the bill; a refusal may be taken as a refusal to accept. The record, or copy, of the officer protesting shall, when verified by the oath of the officer, be evidence of the facts stated, and giving or mailing of the notice, with statements made, shall be *prima facie* evidence. **PROTESTS**—Bills of exchange and indorsed notes may be protested by any notary public, justice of the peace, mayor of a city, town or village, or by the clerk of a circuit or chancery court. Immediately after protest, the officer shall give notice in writing to each party protested against. **NOTICE** may be served by mail directed to the party at his known or usual place of abode or business. The officer shall deliver to the holder a copy of his protest, signed and verified by oath. **DAYS OF GRACE** allowed on all bills of exchange and notes for a sum certain, payable only in money. **HOLIDAYS**—When a bill or note should be presented for acceptance or payment, according to its terms, on a Sunday, New Year's day, Fourth of July, Thanksgiving day or Christmas day, it shall be presented on the day next before the day on which by its terms it is presentable, as shall not be one of the days herein specified. **DAMAGES** on bills of exchange, drawn upon any person, or body in the U. S., and out of this State, and protested for non-acceptance, five per centum on the sum drawn for, and interest and principal. If payable out of the U. S., ten per centum, with interest. Holder is in all cases entitled to costs and charges. Domestic bills, drawn and payable in this State, for twenty dollars or more, shall be protested for non-acceptance or for non-payment same as foreign bills. No damages to accrue, they shall be subject to and governed by the customs and usages of foreign bills. **LEGAL** interest 6 per cent, permit 10 in writing. **ACTION** on notes limited to 6 years.

§ 485. **Missouri**—**ACCEPTANCE** must be in writing, signed by the acceptor or his lawful agent, on the bill. **PROTEST**—A notarial protest is evidence of a demand and refusal to pay, as stated in the protest. **DAYS OF GRACE**—Not allowed. **HOLIDAYS**—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, a general State election day, Thanksgiving day, Dec. 25. If any fall on Sunday, the following Monday. Negotiable instruments falling due or presentable on these days for acceptance or payment, giving notice if for dishonor, shall be due or presentable the next succeeding day, unless it be a holiday; in such case it shall be due the day previous. In cities with a population over 100,000, every Saturday after 12 o'clock noon, and negotiable instruments due or presentable for acceptance or payment shall be due the next succeeding secular business day. **DAMAGES** on bills drawn or negotiated in the State on persons in the State and protested, 4 per cent; on persons in other States, 10 per cent; on persons in other countries, 20 per cent. Notice given when required at common law. Holder entitled to recovery when bill acquired for a valuable consideration. No damages allowed if bill is paid with interest and pro-

test charges within twenty days after dishonor. Damages are in lieu of protest and other charges and expenses incurred previous to or at the time of giving notice. **LEGAL INTEREST** 6 per cent, permit 8 per cent in writing. **ACTION** on notes limited to 10 years.

§ 486. **Montana**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS** are Sundays, Jan. 1, Feb. 22, May 30, July 4, first Monday of September, Dec. 25, election day throughout the State, Thanksgiving day, Saturday after 12 o'clock. If any fall on Sunday, the following Monday to be observed. Contracts falling due on these days may be performed the next business day. **DAMAGES** allowed if drawn on a person in this State, \$2 upon each hundred; if in another State, \$5 per \$100; if in North America, Europe, or Great Britain, \$10 per \$100; elsewhere, \$15 per \$100. Lawful interest allowed from time of protest. **LEGAL INTEREST** 10 per cent, permit any rate in writing. **ACTION** on notes limited to 8 years.

§ 487. **Nebraska**—**PROTEST** of commercial papers to be made by notaries public, same to be prima facie evidence of the fact without proof. **NOTICE** of protest to be given by them to indorsers, makers, drawers or acceptors. **DAYS OF GRACE**—Three are allowed except on demand. **LEGAL HOLIDAYS**—Jan. 1, Feb. 22, April 22, first Monday in September, Dec. 25, May 30, July 4, and Thanksgiving day. When they occur on Sunday, the day following. Any negotiable instrument falling due on these days, it shall be lawful to make demand, protest and give notice of dishonor on the following business day. **DAMAGES** on protest shall be subject to twelve per centum if drawn on persons without the United States and six per centum if within the United States, outside this State. **SUIT** may be brought in the name of the drawee. Endorser may bring suit in his own name. May be brought against the drawers, makers or endorsers, jointly or severally. **LEGAL INTEREST** 7 per cent, permit 10 per cent in writing.

§ 488. **Nevada**—**ALL NOTES** in writing, made and signed by any person, promising to pay to any other person, or his order, or to bearer, or to the order of any other person, a sum mentioned shall be due and payable as expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants. **AN ACCEPTANCE** must be in writing, signed by the acceptor, or his lawful agent. If on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom it was shown, and who, on the faith thereof, shall have received it for a valuable consideration. **NOTICE**—Mailing notice of dishonor of bill to the city or town where the person sought to be charged, resided at the time of drawing, making or endorsing it, shall be sufficient, unless the person specified the postoffice at the time. **DAYS OF GRACE**—Three are allowed on all bills or drafts, except those payable on sight. Holidays coming within these days shall be treated as one of such days. **HOLIDAYS**—January 1, February 22, July 4, Thanksgiving Day, December 25. Bills and notes falling due on these days shall be due and payable on the day previous. **DAMAGES** on protested bills. If on

persons in the States east of the Rocky Mountains, \$15 on the hundred; if in any foreign country, \$20 on the hundred. In lieu of interest and protest charges, but interest and damages shall accrue subsequent to protest. Damages are recoverable only by the holder who purchased it for a valuable consideration. **SUIT**—Payees and indorsees of notes, payable to them, or their order, and the holders of such notes payable to bearer, may maintain action for the sums mentioned, against the makers and indorsees, as in cases of inland bills of exchange, and not otherwise. **LEGAL** interest 7 per cent, permit any rate in writing. **ACTION** on notes limited to 6 years.

§ 489. **New Hampshire**—**PROTEST** upon a promissory note payable on demand, a demand made at the expiration of sixty days from its date without grace, or any time within that term, is reasonable, and any act or neglect which by the rules of law and custom is deemed equivalent to a presentment and demand on a note, payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within the sixty days, shall be a dishonor thereof, and authorize the holder to give notice of dishonor to the indorser, as upon a presentment to the promisor and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand of payment shall charge the indorser unless made on or before the last day of the sixty days. **NOTICE** of the non-payment or non-acceptance, shall be sufficient to charge a party to same, who resides in the town in which it is made payable if the notice is seasonably deposited. Mailed is sufficient. **HOLIDAYS**—Bills of exchange, etc., maturing or to be paid on Sunday, Thanksgiving, fast day, Labor Day, Christmas, July 4, February 22, May 30, or when either of the last four fall on Sunday or on the day of general election of members of the legislature, are payable and to be executed on the day next succeeding, not being one of said days. May be noted and protested on such next preceding day. Notice given the following day not a holiday. **DAYS OF GRACE** abolished. **LEGAL INTEREST** 6 per cent.

§ 490. **New Jersey**—See Sec. 458 Uniform Neg. Inst. Law. **BANK NOTES**, countersigned and registered, refused redemption by their makers between the hours of ten and three o'clock where payable, may be protested by a notary public, at the request of the holder, in the usual manner. Notice to be given to the State Treasurer. **HOLIDAYS**—January 1, February 12, 22, May 30, July 4, first Monday of September, December 25, any general State election day, Thanksgiving Day, and Saturday from 12 o'clock noon to 12 o'clock midnight. Bills, notes and checks presentable for acceptance, or payment on these days, shall be presentable on the secular day succeeding, and on the half holiday, shall be presentable before 12 o'clock noon of the same day, provided that for the protesting or otherwise holding liable parties to any bill, note or check, not paid before 12 o'clock on Saturday, demand may be made and notice of protest or dishonor given on the next succeeding business day; provided further, that the party receiving such for collection shall not be deemed negligent or liable. Any of these days falling on Sunday the next succeeding day shall be observed, paper due

on that day shall be deemed due the next business day. **LEGAL** interest 6 per cent. **ACTION** on notes limited to 6 years.

§ 491. **New Mexico**—**PROMISES** to pay are assignable by endorsement. An assignee has a right of action in his own name, subject to any set off of the maker or debtor before notice of the assignment. The assignor may discharge himself from liability by specifying in the assignment that the same is made without recourse. **ACCEPTANCES** must be in writing, signed by the person to be charged or his agent. **PROTEST AND NOTICE**, taken and sent by a notary public under his official seal. **DAYS OF GRACE** allowed. **LEGAL HOLIDAYS** July 4, December 25, January 1, Thanksgiving Day. Paper due on Sunday or a legal holiday, shall be due the next business day. **DAMAGES** on non-accepted or non-payment bills of exchange, drawn or indorsed in this territory, when recoverable: If drawn outside the U. S. twelve per cent, in the U. S. six per cent; from time of protest. **SUIT** may be brought jointly on all persons liable. May join an executor, etc., liable in a representative character. **LEGAL** interest 6 per cent, permit 12 per cent in writing. **ACTION** on notes limited to 6 years.

§ 492. **New York**—(See Sec. 458 Uniform Neg. Inst. Law.) **HOLIDAYS**—January 1, February 12 and 22, May 30, July 4, first Monday of September, December 25. If any are Sunday, then the day thereafter. Each general election day and Thanksgiving Day. The term half-holiday includes from noon to midnight of each Saturday not a holiday. **LEGAL INTEREST** 6 per cent. **ACTION** on notes limited to 6 years. Notes given for "Patent Rights" or for farm produce "Speculation" must be so marked on their face, if not, it is a misdemeanor to handle or deal in them. Bonds with coupons, not intended to circulate as money in N. Y.; not registered, may be issued, having on them that, they are the property of such holder and the money is payable only to him, his legal representatives or assigns, unless they are transferred in blank, payable to bearer, or order with assignor's residence added.

§ 493. **North Carolina**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—January 1, February 22, May 10, 20, July 4, Thanksgiving, December 25, any of which falling on Sunday the Monday following shall be observed. Papers due on such Sunday payable on the Saturday preceding; papers otherwise due on said Monday payable on Tuesday thereafter. If these days fall on Saturday the papers due on Sunday are payable the Monday succeeding. If they fall on Monday, the papers due on that day are payable the Tuesday succeeding. **DAMAGES** on protested bills drawn in this State upon persons in other States, 3 per cent on the principal. If in any other place in North America except the northwest coast of America or in the West Indies or Bahama Islands, 10 per cent. If drawn in any other State or in Europe, or South America, 15 per cent. If drawn in any other part of the world, 20 per cent. **LIABILITY**—Indorsers on bonds, bills or promissory notes are liable as surety to the holder, and no demand need be made on the maker previous to an action on the indorser unless the indorsement plainly express otherwise. This does not apply in any respect to inland or foreign bills of exchange. **SUIT** may be

brought by an indorser in his own name. **LEGAL INTEREST** 6 per cent. **ACTION** on notes limited to 3 years.

§ 494. **North Dakota**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—Sundays, January 1, February 22, July 4, December 25, May 30, Thanksgiving Day, State election day throughout the State. If any of these fall on Sunday then the Monday following. Acts of a secular nature may be performed upon the day following. **DAMAGES** on foreign bills of exchange, drawn upon any person in this State, \$2 on each one hundred; on persons out of this State, but in the States of Nebraska, Iowa, Minnesota, South Dakota, Wisconsin, Illinois, Missouri, and Montana, \$3 on each one hundred dollars; if on a person in any of the other States, \$5 on the hundred; if on a person outside the United States, \$10 on the hundred. With interest from notice of dishonor. **LEGAL INTEREST** 7 per cent. **ACTION** on notes limited to 6 years.

§ 495. **Ohio**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—January 1, July 4, December 25, February 22, May 30, Thanksgiving Day, first Monday in September, shall be considered as Sunday for presenting and protesting all negotiable paper. If these days occur on a Sunday the succeeding Monday shall be so observed. **LEGAL interest** 6 per cent, permit 8 per cent in writing. **ACTION** on notes limited to 15 years.

§ 496. **Oklahoma**—**PROTEST** made when paper is dishonored, which is, when not accepted or paid according to its tenor. Protest must be made by a notary. If one cannot be found then a respectable person in the presence of two witnesses. Notice must be given on the day of dishonor or on the next business day. If by mail then by the first mail on the day after the dishonor. **NOTICE** may be given in any form describing the instrument. **DAYS OF GRACE** are allowed unless otherwise stipulated. Sundays and holidays are excluded. **HOLIDAYS**—Sunday, January 1, February 22, July 4, December 25, May 30, election day throughout the territory and Thanksgiving Day. If January 1, February 22, July 4 and December 25 fall upon Sunday the Monday following is holiday. A negotiable instrument falling due on these days shall be deemed due the following business day. **LEGAL interest** 7 per cent, permit 12 per cent in writing. **ACTION** on notes limited to 5 years.

§ 497. **Oregon**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—Sunday, January 1, February 22, May 30, July 4, first Monday in September, December 25, election day throughout the State, Thanksgiving Day. Any of these falling on Sunday, the Monday following shall be observed. Negotiable instruments falling due on these days shall be due and payable on the next succeeding business day. **LEGAL INTEREST** 6 per cent, permit 10 per cent in writing. **ACTION** on notes limited to 6 years.

§ 498. **Pennsylvania**—See Sec. 458 Uniform Neg. Inst. Law. **PRESENTMENT** for payment to be made elsewhere than in this State, referred to only in the margin of the bill, or below the name of the drawee, shall not be so construed as to charge the indorsers for non-payment, unless place was, at the date of the bill, the actual place of

the drawee, or is expressed as such in the reference, or it appear by the protest that, upon diligent inquiry, the place could not be found. **LEGAL HOLIDAYS** are January 1, February 12, 22, the third Tuesday of February, Good Friday, May 30, July 4, first Monday of September, first Tuesday after the first Monday of November, December 25, Saturdays after 12 o'clock, and Thanksgiving Day. Paper presentable for acceptance, payment, or protesting, or giving notice of, on these days shall be presentable or protested on the business day next succeeding except when payable at sight or on demand. If on a Saturday half holiday, shall be payable at or before 12 o'clock on that day; providing, that for the purpose of protesting or holding liable a party to a bill not paid before 12 o'clock, a demand for acceptance or payment shall not be made and notice of protest or dishonor shall not be given until the next succeeding business day. Any one receiving such paper for collection, etc., on such half holiday shall incur no liability or neglect in not presenting same. The entry, issuance, service, or execution of any writ, summons, confession of judgment, or other legal process on any holiday or half holiday designated here, shall not be prevented or invalidated, nor shall any bank be prevented from keeping its doors open for business on such afternoon if its directors so elect. When holidays fall on Sunday, the following Monday shall be observed. **DAMAGES**—Bills, etc., returned protested are entitled to damages above the principal and protest charges from time of notice and demand. In the United States, 5 per cent, except California, New Mexico, and Oregon; there 10 per cent. In Asia, Africa, or Pacific Islands, 20 per cent. In Mexico, Spanish main, West Indies or Atlantic islands, east coast of South America, or Europe, 10 per cent. On west coast of South America, 15 per cent. Any other part of the world, 10 per cent. In lieu of interest and charges other than protest, to the time of notice. Rate of exchange same as at time of protest. **LEGAL INTEREST** 6 per cent.

§ 499. **Philippine Islands**—**HOLIDAYS**—Sundays, Jan. 1, Feb. 22, July 4, Holy Week (Thurs. and Fri.), Aug. 13, Thanksgiving day, Dec. 25 and 30. Paper falling due on these days is due the previous day. If it is a holiday then the previous day to that. If fall on Sunday then the day succeeding.

§ 500. **Porto Rico**—**HOLIDAYS**—Sundays, Jan. 1, Feb. 22, March 22, Good Friday, May 30, July 4, 25, first Monday in September, Dec. 25, Thanksgiving day. When these fall on Sunday the following day is to be so observed. Bills, notes and checks to be presented for acceptance or payment on the following secular day.

§ 501. **Rhode Island**—See Sec. 458 Uniform Neg. Inst. Law. **DAYS OF GRACE**—Three allowed on drafts. **HOLIDAYS**—February 22, first Wednesday of April, May 30, July 4, first Monday of September, December 25, second Friday in May, Tuesday after the first Monday of November in every second year after 1896, Thanksgiving Day. When either of the said days fall on Sunday, then the day following it. Bills, notes, drafts, or other evidences of indebtedness due and pay-

able on such holidays to be made on the business day next following. In default of payment, same may be protested and such protest shall be valid. Saturday is a holiday after 12 o'clock noon. This shall not apply to checks or demand drafts presented before 12 o'clock noon on Saturday. **LEGAL INTEREST** 6 per cent, unless a different rate is expressly stipulated. **DAMAGES**—Any foreign bill of exchange drawn or indorsed within this State, returned protested, shall be subject to 10 per cent damages and charges for protest, and 6 per cent interest from the date of protest. Action may be brought for the principal, damages, interest and charges of protest against the drawers and indorsers, jointly or severally.

§ 502. **South Carolina**—AN ACCEPTANCE must be in writing upon the bill. If any person accept a bill for a former debt due him, it shall be accounted a payment of such, if such person fails to take due course to obtain payment thereof by endeavoring to have it accepted and paid, and make protest, either for non-acceptance or non-payment, but nothing here shall extend to discharge any remedy against the drawer, acceptor or indorser of such bill. No acceptance of any inland bill of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; and if such bill be not accepted by such underwriting or endorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for nonacceptance thereof, and, within fourteen days after such protest, the same to be sent, or otherwise notice thereof be given, to the party from whom such bill was received, or left in writing at the place of his or her usual abode; and if such bill be accepted, and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compelled to pay costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given, in manner and form above mentioned. Nevertheless, every drawer of such bill shall be liable to make payment of costs, damages and interest upon such inland bill, if any one protest be made of nonacceptance or nonpayment thereof, and notice thereof be sent, given or left as aforesaid. **PROTEST AND NOTICE**—Notary public's protest is sufficient evidence of notice in any action by any person against any of the parties to a bill or note. Protested bills carry 7 per cent interest from time of protest with damages and costs. Protest not necessary for acceptance or non-payment of an inland bill, unless the value is expressed in the bill and it be drawn for one hundred dollars or more. **DAYS OF GRACE** are allowed on all bills, sight and otherwise. **HOLIDAYS**—National Thanksgiving Day, general election days, January 1, 19, February 22, May 10, June 3, July 4, December 25, first Monday in September. In Charleston County add Saturday afternoons after 12 o'clock. Paper payable on Sunday or a legal holiday shall be payable the next day, provided it be not a Sunday or legal holiday; if so, then on the first day thereafter. Any holiday falling on Sunday the following Monday to be observed. **DAMAGES** on protested bills on parties out of this State, 10 per cent. In any

other part of North America or the West Indies, 12½ per cent. Any other part of the world, 15 per cent, and all charges incidental with interest until paid. Bills and notes drawn for less than \$1.00 payable to order or bearer are void. LEGAL INTEREST 7 per cent. ACTION on notes limited to 6 years.

§ 504. **South Dakota**—PROTEST to be made by notary public if one can be obtained, otherwise any reputable person can so act in the presence of two witnesses. Must be in writing, for non-acceptance must be made in the city or town in which the bill is presented. Protest must be noted the day presentment is made, or on the next business day. NOTICE of protest given in same manner by notary and to state for whom made. DAYS OF GRACE—Three allowed. HOLIDAYS are Sundays, January 1, February 22, July 4, December 25, May 30, Thanksgiving Day, election days. If January 1, February 22, July 4, or December 25 fall on Sunday, the Monday following is holiday. Bills falling due on these days must be presented on the following business day. DAMAGES—If drawn upon person in this State, \$2.00 on each \$100.00 of the principal. Upon persons in Nebraska, Iowa, Minnesota, Wisconsin, Illinois, Missouri or Montana, \$3.00 on each \$100.00. On persons elsewhere in the United States, \$5.00 on \$100.00. On a person in a foreign country, \$10.00 on each \$100.00. If amount is expressed in United States money, estimate without regard to rate of exchange. If in foreign money, estimate as per rate at time of protest of similar bills in the place nearest to where the bill was negotiated. LEGAL INTEREST 7 per cent, permit 12 per cent in writing. ACTION on notes limited to 6 years.

§ 505. **Tennessee**—See Sec. 458 Uniform Neg. Inst. Law. HOLIDAYS—January 1, February 22, July 4, December 25, Good Friday, Decoration Day, Memorial Day, second Friday in May, first Monday in September; when these days fall on Sunday, then the following Monday; also Thanksgiving Day, all days set apart for county, State or national elections throughout the State. Negotiable paper falling due on these days shall be due and payable the first business day following. LEGAL INTEREST 6 per cent. ACTION on notes limited to 6 years.

§ 506. **Texas**—PROTEST AND NOTICE—The holder of a bill or note may fix the liability, also, by protesting and giving notice according to the usage and custom of merchants by a notary public. The notary shall set forth in his protest and record, a full statement of the facts, specifying demand, sum of money, of whom, when and where; also serve notices of protest on the drawers and indorsers made liable, and note in his protest record, with time, place and manner of service. Protest or copy of the record certified under his hand and seal shall be admitted as evidence in all courts of this State. DAYS OF GRACE—Three allowed on all bills and notes negotiable. HOLIDAYS are January 1, February 22, March 2, April 21, July 4, December 25, Thanksgiving Day, and general State election day. Same are treated as Sunday for presentation, protesting and giving notice of on bills of

exchange, notes, etc. All exemptions and requirements usual on legal holidays may be observed. If a holiday fall on a Sunday, the day following shall be observed, but bills of exchange, etc., may be presented on the preceding Saturday and proceeded on accordingly. **DAMAGES ON PROTESTED BILLS**—The holder of any protested bill, etc., drawn by a merchant within the limits of this State upon his agent or factor, living outside this State shall, after having fixed the liability of the drawer or indorser, be entitled to recover 10 per cent damages on the amount of the bill, with interest and cost of suit accruing. **LIABILITY** of parties may be fixed without protest and notice, by the holder instituting suit after the right of action accrues. A bill not accepted renders the drawer immediately liable. Assignee may sue in his own name. **LEGAL INTEREST** 6 per cent, permit 10 per cent in writing. **ACTION ON NOTES** limited to 4 years.

§ 507. **Utah**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—Sundays, January 1, February 22, May 30, July 4, 24, December 25, April 15, first Monday in September, Thanksgiving Day. When such days fall on Sunday the following Monday shall be observed. In case Sunday and the holiday come together, said note or bill must be presented on the day next succeeding said Sunday or holiday. **LEGAL INTEREST** 8 per cent, permit any rate in writing. **ACTION** on notes limited to 6 years.

§ 508. **Vermont**—A **DEMAND NOTE** is overdue sixty days after date. No presentment shall charge the indorsers unless made on or before sixty days. **PROTEST**—A negotiable promissory note, inland bill of exchange, draft, or check, may be officially protested for non-payment by a notary public and notice given by him to the parties to the instrument. The certificate of a notary, under his hand and official seal, is evidence of notice. **NOTICE** by mail to the nearest postoffice of the party, prepaid, is sufficient. **DAYS OF GRACE**—Abolished. **HOLIDAYS**—January 1, July 4, August 16, May 30, December 25, February 22, first Monday in September, Thanksgiving, shall for presenting for acceptance or payment, protesting, and giving notice of the dishonor of bills, etc., be considered like Sunday. Any of these days falling on Sunday, the preceding Saturday shall, for such purposes, be considered like Sunday. Falling due on Sunday or a legal holiday it shall be considered as due on the following Monday. **SUIT**—The indorsee or holder may maintain in his own name. The indorser shall have the same right to pay as the principal, and upon maturity may tender the true amount. If the holder refuse, he is discharged from liability. **DAMAGES** are allowed as full compensation for accrued interest before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only, upon bills drawn or negotiated in this State and protested. On persons in this State, \$1 per \$100; in other States, \$2.50 per \$100; in foreign lands, \$5 per \$100. Interest from time of notice on the principal and damages. Exchange, no regard to if in the United States. If expressed in foreign money, estimate as where such bills are currently sold. **LEGAL interest** 6 per cent. **ACTION** on notes limited to 6 years.

§ 509. **Virginia**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—January 1, 19, February 22, July 4, December 25, Thanksgiving, or a day of fasting and prayer appointed by the President or the Governor of the State, May 30, first Monday in September, Saturday afternoons. Negotiable instruments presentable for acceptance or payment on these days shall be presentable on the preceding business day. Such holidays falling on Sunday, the Monday following shall be observed as a holiday, and negotiable instruments falling due shall be presentable on the next business day. Notice of dishonor need not be given until the first day thereafter which is not a Sunday or such public holiday. **DAMAGES** on bills drawn or indorsed within this State and protested shall be subject to 3 per cent if payable out of Virginia and in the United States; if payable without the United States, 10 per cent, upon the principal. Action may be maintained upon any note or writing by which there is a promise, undertaking, or obligation to pay money, if signed by the party who is charged thereby, or his agent, and in an action of assumpsit, on any such note or writing, the rule as to averment and proof of consideration, shall be the same as in any action of debt thereon. **LEGAL INTEREST** 6 per cent. **ACTION** on notes limited to 5 years.

§ 510. **Washington**—See Sec. 458 Uniform Neg. Inst. Law. **HOLIDAYS**—July 4, December 25, Saturdays from 12 o'clock noon to Sunday at midnight. Treated as Sundays for the presentation for acceptance or payment or protest of bills, notes, checks, etc. The other holidays do not apply to bills and notes. **LEGAL** interest 6 per cent, permit 12 per cent in writing. **ACTION** on notes limited to 6 years.

§ 511. **West Virginia**—**ACCEPTANCE** of a bill payable at a banker's or other place, without further expression in the acceptance, is a general acceptance, and presentment for payment may be either at such place, or as it might have been, if no such place had been specified in the acceptance. If place is specified in the acceptance, it is a qualified acceptance and must be presented at such place. But as against the maker of a note or the acceptor of a bill, whether general or qualified, it shall not be necessary to aver or prove presentment for payment at the time or place specified. Such maker or acceptor may, however, set up as a matter of defense any loss sustained by him by reason of the failure to make such presentment. **PROTEST**—If a bill expressing that it be payable other than in the place of residence of the drawee, shall not be accepted on presentation, may, without further presentation to the drawee, be protested for non-payment in the place expressed to be payable in, unless the amount be paid to the holder on the day on which it would be payable had it been duly accepted. Protest on a foreign bill, check or note and in other cases, is prima facie evidence of the facts stated. **NOTICE** of dishonor sent through the mail properly addressed to the last known postoffice of the party, is equivalent to personal service. **DAYS OF GRACE** abolished. Every note or check payable in this State at a particular bank or office thereof for discount or deposit, or at a savings institution or bank, and every

inland bill payable in this State, shall be negotiable and may upon dishonor be protested, the same being in evidence as in case of a foreign bill. An instrument payable subsequent to its date, and otherwise in the form of a check is a bill of exchange. **DAMAGES**—On a bill drawn or indorsed within this State, payable out of the State but in the United States, 3 per cent; out of the United States, 10 per cent. **HOLIDAYS**—Jan. 1, Feb. 22, July 4, May 30, Dec. 25, first Monday in September, Thanksgiving. If any of these fall on Sunday the following Monday is to be observed. Any bills, notes or checks due on these days are payable on the following business day. If protested on the preceding day, notice need not be given until the business day following such holiday. If accepted *supra* protest for honor or has a reference in case of need, it shall not be necessary to present such for honor, or to such referee until the day following the one on which it is due, if their address is other than in the place where it is payable, then it shall not be necessary to forward it until the following day. If that day is a holiday, then the next business day will answer. **LEGAL** interest 6 per cent. **ACTION** on notes limited to 10 years.

§ 512. **Wisconsin**—See Sec. 458 Uniform Neg. Inst. Law (few exceptions). **HOLIDAYS**—Sundays, Jan. 1, Feb. 22, May 30, July 4, Labor Day; Thanksgiving Day, general election day, Dec. 25. If any of these fall on Sunday the following Monday is observed. Notes, drafts and bills falling due on these days are payable on the succeeding business day. **FOREIGN BILLS** dishonored by mere acceptance must be protested for non acceptance and such bill not previously so dishonored is dishonored by nonpayment it must be protested for nonpayment. If not so protested the drawer and indorsers are discharged. If not a foreign bill on appearance protest in case of dishonor is unnecessary. Notice of protest must be given in writing to the drawer, maker and each indorser of. Every protested bill or note must have the notary's certificate attached, under his seal and hand, stating presentment, demand, refusal and protest for nonacceptance or nonpayment. Contents of notice giving time, manner of service, postoffice and reputed residence of each person notified by mail, and a record must be kept of same with description of instrument protested. **LEGAL** interest 6 per cent, permit 10 per cent in writing. **ACTION** on notes limited to 6 years.

§ 513. **Wyoming**—**ACCEPTANCE** to be written across the face of the instrument. It is not necessary to make a demand for payment on the principal debtor in order to charge him. **PRESENTMENT** must be by, or on behalf of, the holder. Must be presented to the principal debtor where presentment should be made, if not, then at his residence or place of business to some other person having charge or employed there. Must be presented on the day of maturity. It is dishonored when not paid or not accepted according to its tenor. **PROTEST**—By a notary or any officer authorized to administer oaths. Must give a literal copy of the instrument or annex the original, state presentment, manner, presence or absence of the drawee or acceptor, the refusal, reasons, and finally protesting against all parties to be

charged. Waiver of protest other than on a foreign bill, waives presentment and notice. NOTICE may be by notary, describing the instrument. Delivery may be personal to some one of discretion at the residence or place of business or by mail, addressed as best informed, on the day of dishonor or the next following. DAYS OF GRACE—Three allowed following the day due, unless the last day is Sunday or a legal holiday, then the next preceding business day shall be the last day of grace. HOLIDAYS—January 1, February 22, May 30, July 4, December 25, Thanksgiving, Arbor and general election days. If any fall on Sunday, the Monday following shall be observed. Instruments dated on Sunday are valid. LEGAL interest 8 per cent, permit 12 per cent in writing. ACTION on notes limited to 5 years.

§ 514. **Canada**—HOLIDAYS—Sundays, New Year's, Good Friday, Easter Monday, July 1, Christmas, Queen's birthday, Thanksgiving, Labor Day, any day appointed by the Lieutenant-Governor. (Some Provinces: Epiphany, Annunciation, Ascension, Corpus Christi, St. Peter and St. Paul's, All Saint's Day, Conception Day, Ash Wednesday.) PROTEST AND NOTICES—Notaries perform these duties.

## CHAPTER VI.

### COMMISSIONERS OF DEEDS.

§ 515. **A commissioner is a person** holding a commission authorizing him to discharge certain duties. A commissioner of deeds is one authorized to take acknowledgements or proofs of written instruments in a foreign State or country. Most of the States of this country have a statute authorizing the governor of its State to appoint a number of residents of other States and countries to act in the taking of acknowledgments or proofs of written instruments, taking depositions of witnesses, taking affidavits and the oaths of persons resident in that State or country for use in the State making the appointment. They are, usually, appointed for a term of years, or during good behavior. They are required to take an oath for faithfulness in office, to have an official seal with which all their acts are to be attested, together with their signature. This seal to contain their name and the name of the State for which they are appointed, together with the word "commissioner." They are usually required to pay a fee for the appointment to the Secretary of the State making the appointment, and are often restricted as to the fee they charge for their acts. Before acting they are required to file with the Secretary of the State appointing them an impression of their official seal, together with their signature, which is kept on file for comparing instruments signed by them.

§ 516. **Acknowledgment.**—A certificate of acknowledgment made by a commissioner of another State, need not be under seal. The want of a date to the acknowledgment would not vitiate it, if the acknowledgment was sufficient when the deed was offered in evidence.<sup>1</sup> In Iowa the certificate of a commissioner of deeds was held not sufficiently authenticated by seal, when the word "Iowa" was written in the body of the seal instead of impressed on the paper, as required by sta-

<sup>1</sup> Irving v. Brownell, 11 Ill. 404.

tute.<sup>2</sup> A deed acknowledged by a commissioner of deeds residing out of the State requires no authentication of his official character.<sup>3</sup> Commissioners of affidavits regularly appointed, have full authority to take acknowledgments within the State for which they are appointed, of lands lying in North Carolina, and, when necessary, to take the privy examination of a married woman, who is a grantor, joining her husband in the execution. When the certificate of such commissioner is adjudged correct by the clerk of the Superior Court of the county in which the land lies, and the deed is registered upon the order of the latter, the registration will be deemed valid for all purposes.<sup>4</sup> An acknowledgment before a commissioner of deeds in one county cannot be read in evidence in another county without the certificate of the clerk of the former county.<sup>5</sup>

§ 517. **Administration of oaths.**—A commissioner of deeds for Illinois residing in another State can administer oaths lawfully required in Illinois.<sup>6</sup>

#### STATUTORY REQUIREMENTS.

§ 518. **Alabama**—APPOINTMENT—By the Governor. TERM—Four years. POWERS—To take and certify depositions, acknowledgments, proof of conveyance, and affidavits, for record in this State by persons outside. OATH of office to be taken. SEAL of office to be procured to authenticate official acts with.

§ 519. **Alaska**—APPOINTMENT by the Governor. TERM—Four years. COMMISSION FEE———. POWERS—To take proofs or acknowledgments of conveyances or other written instruments, acknowledgments of satisfaction of any judgment or decree of a court in this district, affidavits or depositions, any other duties conferred or imposed by the Alaska code or statute. SEAL—Provide himself with an official seal. OATH for the faithful performance of his official duties to be taken before a judicial officer of his county, city or town, and file same, together with an impression of his official seal, in the office of the Secretary of Alaska Territory.

§ 520. **Arizona**—APPOINTMENT—By the Governor. COMMISSION—Fee, \$2.50. TERM—Four years. POWER—Within his State or country. To administer and certify oaths, take depositions, affidavits

<sup>2</sup> Gage v. Dubuque & P. R. Co.,  
11 Iowa, 310.

<sup>3</sup> Vance v. Schuyler, 1 Gilman,  
160.

<sup>4</sup> Buggy Co. v. Pegram, 102 N. C.  
540.

<sup>5</sup> Wood v. Weinant, 1 N. Y. 77;  
Borst v. Empire, 5 N. Y. 33.

<sup>6</sup> Kassing v. Griffith, 86 Ill. 265.

and acknowledgments. **SEAL**—Provide an official seal having engraved upon the words “Commissioner of Deeds for Arizona Territory” and the name of his State or country. All his official acts to be authenticated with the same. His acts have the same force and effect as those executed in this State by an officer so authorized. **OATH** of office to be taken and subscribed to before an officer authorized in his State or country to take oaths for faithful performance of his duties. Same to be filed with the Secretary of this territory within six months after taking. **FEES** to be the same as those prescribed for notaries.

§ 521. **Arkansas**—**APPOINTMENT**—By the Governor. (Fee, \$5.00.) **TERM**—At the pleasure of the Governor. **POWER**—To administer oaths, take depositions, affidavits and acknowledgments. The same, when certified by them, to be effectual in law as by any other authorized officers. **OATH** of office to be taken and subscribed to before some officer authorized to administer oaths in their State, before acting. The oath, signature and an impression of his official seal to be filed with the Secretary of this State within six months after appointment. A **SEAL** to be provided to authenticate his official acts. **FEES**—Not prescribed.

§ 522. **California**—**APPOINTMENT**—By the Governor. (Fee, \$5.00.) **TERM**—Four years. **POWER**—Within his State and country to administer oaths, take and certify depositions and acknowledgments. A **SEAL** to be procured having engraved upon the coat of arms of this State, the words commissioner of deeds for the State of California and the name of his State. All his official acts to be authenticated with it. His acts have the same effect as if done and certified in this State by any officer so authorized. **OATH** of office must be filed with the Secretary of this State within six months after the appointment. **FEES**—To be the same as those prescribed for notaries public. Names of commissioners to be published three times at the seat of government of the State in some weekly paper.

§ 523. **Colorado**—**APPOINTMENT**—By the Governor. (Fee, \$5.00, Com., \$1.00 O. and B.) **TERM**—At the pleasure of the Governor. **POWERS**—To take acknowledgments, depositions, affidavits and administer oaths. A **SEAL** to be procured to authenticate their acts with name of State on. **OATH** of office to be taken and subscribed to before a judge or clerk of a court of record where he resides. Oath, impression of his seal, and signature to be deposited with the Secretary of this State within six months after appointment. His acts under official seal have the same effect as any officer so authorized. **FEES** to be the same as notaries. Noting for protest, 50c; protest and record, 75c; notice of protest, each, 50c; certificate and seal, 50c; acknowledgments, 50c; additional, 25c; taking depositions, 15c per 100 words; affidavit, 25c; other fees same as a justice of the peace.

§ 524. **Connecticut**—**APPOINTED** by the Governor. (Fee, \$6.00.) **TERM**—Five years. **POWER**—To take acknowledgments, oaths, etc., examine witnesses, take depositions. **OATH** of office to be filed with

the Secretary of State. SEAL—Official seal to be procured to authenticate their acts with. FEES fixed by the State in which they reside.

§ 525. **Delaware**—APPOINTED by the Governor. (Fee, \$10.) TERM—Seven years. JURISDICTION for the State in which they reside or are appointed. SEAL to be procured. POWER to administer oaths, take depositions, affidavits, acknowledgments and the private examination of any married woman, party to a deed. OATH of office signed and certified to be filed with the county recorder. FEES—Same as notaries.

§ 526. **District of Columbia**—APPOINTMENT—By the President. (No fee required.) TERM OF OFFICE—Five years. POWER—To take acknowledgments of deeds for conveyance of property in the District, to administer oaths, take depositions in cases pending in the courts of the District. SEAL—His acts properly attested by hand and seal of office have full faith and credit.

§ 527. **Florida**—APPOINTMENT—By Governor. (Fee, \$7.00.) TERM—During pleasure of the Governor. POWER—To take acknowledgments for conveyances in this State, any contracts, letters of attorney or other writings under seal to be used or recorded in this State, to administer oaths. OATH of office to be taken before a notary or justice of the peace in his city or county for faithful performance of all duties, same to be filed with the Secretary of this State. SEAL to be procured to authenticate his acts.

§ 528. **Georgia**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM—No statute. POWERS—To take and certify acknowledgments or proofs of conveyances, take depositions, powers of attorney, wills, affidavits, oaths and other writings requiring attestation in this State. OATH of office to be taken before anyone authorized to administer oaths and filed with the Secretary of State. SEAL of office to be procured to authenticate his official acts. FEES regulated by the State where resident.

§ 529. **Idaho**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM of office, four years. POWER—To take depositions, acknowledgments and oaths, within his State. SEAL of office to be procured for authenticating his official acts with, having on it "Commissioner for the State of Idaho," his name. His oath of office to be filed with the Secretary of this State within six months. FEES—Same as allowed notaries.

§ 530. **Illinois**—APPOINTMENT—By the Governor. Not to exceed five for any city or county and one for every 10,000 inhabitants in cities, States and territories. Applicant shall present to Governor, under seal of the mayor of the city or judge of a court of record of the city, that the applicant is a proper person for the appointment. (Fee, \$6.00 for commission and instructions.) TERM—Four years. OATH of office to be taken before a court of record where resident. POWERS—Take release of dower, acknowledgments, contracts, assignments, transfers, letters of attorney, satisfaction of judgments or mortgage, or any in-

strument for record in the State. To certify to the official character, seal or signature of any other officer within their district authorized to take acknowledgments or oaths; take depositions. His properly executed acts to have same effect as any officer in this State so authorized. SEAL to be procured having on "A Commissioner for the State of Illinois," together with the name of State and county, town or city of his appointment. Within six months of his appointment he shall file with the Secretary of this State his oath, signature and impression of his seal. Failure to qualify within six months forfeits appointment. No one can act before qualifying. FEES—See notaries.

§ 531. **Indiana**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM of office, four years. POWERS—To take depositions and affidavits to be used in the courts of this State, acknowledge deeds and other documents for record in this State, same to be attested with their official seal. OATH of office to be subscribed to before some officer authorized to administer it, same to be filed in the office of the Secretary of this State. SEAL—To procure an official seal to authenticate his acts with. FEES—Certificate and seal, 50c; depositions, etc., per 100 words, 10c; administering oath, 10c; protest, 50c; notice of, 25c; acknowledgments and seal, 25c; per 100 words, copying protests, 10c.

§ 532. **Indian Territory**—(Com. of Deeds). No statute.

§ 533. **Iowa**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM—Three years. POWERS—To take depositions, affidavits, acknowledgments and oaths. SEAL—To procure same having on "Commissioner, Iowa," his name and State. Same with signature received as evidence in this State. OATH for faithfulness to be taken before a judge or clerk of a court of record or an authorized commissioner for Iowa, under the hand and official seal of party taking, same with signature added and impression of the seal of the appointee to be sent to the Secretary of this State. Commissioners of like nature appointed by other States for this State, are invested with the authority of justices of the peace to issue subpoenas for witnesses before them, and can administer oaths when permitted by such State. False swearing is subject to the perjury laws of this State. Such commissioner shall file a certificate of his authority and appointment with the Secretary of this State. FEES—Same as allowed in his State for like services.

§ 534. **Kansas**—APPOINTMENT—By the Governor. (Fee, \$1.00.) TERM—During pleasure of the Governor. POWERS—To administer oaths, take depositions, affidavits and acknowledgments of deeds, etc., powers of attorney and instruments for record in this State, same to be effectual in law. OATH of office to be taken and subscribed to before a justice of the peace or other officer authorized to administer oaths. Same to be filed with the Secretary of this State; also his signature and impression of official seal. SEAL—To be procured to authenticate his official acts with. FEES—No statute.

§ 535. **Kentucky**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM OF OFFICE—Two years. AN AFFIDAVIT to well and truly perform his duties, to be made before an officer authorized to administer

oaths, same to be transmitted for filing to the Secretary of this State. **POWERS**—To take proofs, acknowledgments (except wills), oaths and depositions for record in this State. All his acts certified under his hand and seal are entitled to record. **SEAL** of office to be procured to authenticate his acts. **FEES**—Making a deed, \$1.50; taking deposition, \$2.00; more than one for same party, each, \$1.00. Not to exceed \$3.00 per day against each party. Subpoenas and other papers same as circuit court clerks. Court may allow for extras.

§ 536. **Louisiana**—**APPOINTED** by the Governor. (Fee, \$5.00.) **TERM**—Four years. **ELIGIBILITY**—Of known integrity and ability, resident in that State. **POWERS**—To take depositions by virtue of a commission, to take acknowledgments and any writings to be used in this State, oaths or affirmations, etc., to attest signatures, official capacity and official acts of any judge, justice of the peace or other public officer holding a commission or acting under authority of the State in which he resides. His power extends only to parties resident of his State, except in taking testimony under a commission. Their commission to conform to the laws of this State. Their signature and official seal to be attached. They can act as notaries in the State where appointed. **SEAL** of office to be provided bearing their name, office and State. Their signature and impression of seal to be deposited with the Secretary of this State. American ministers, charge d' affaires, consuls-general, consuls, vice-consuls and commercial agents in any foreign country can act and use their own seals of office. Notaries of other States may act, with proof of their signature.

§ 537. **Maine**—**APPOINTMENT**—By the Governor. (Fee, \$5.00.) A Justice of the Supreme Court or the Governor of the State of the applicant must sign the application. **TERM OF OFFICE**—At the Governor's pleasure. **POWERS**—To take acknowledgments and certify same under his official seal, to administer oaths, to take and certify depositions. **OATH** of office to be taken and subscribed to before a judge or clerk of the Superior Court of his State or country. Same with impression of his official seal to be filed with the Secretary of this State. False certificates of acknowledgments, or signatures, shall be punished as forgeries. **SEAL** to be provided to authenticate his acts. **FEES**—No statute regarding.

§ 538. **Maryland**—**APPOINTMENT**—By the Governor, with the Senate's consent, biennially. (Fee, \$10.00.) **TERM OF OFFICE**—Two years. **OATH** of office to be taken before a justice of the peace or notary public in the city or county of his residence. **SEAL**—He shall provide an official seal for authenticating all his official acts. An impression of his seal with his oath of office to be filed with the Secretary of this State. **POWERS**—After qualifying he can administer oaths for use in this State, take acknowledgments, and other instruments for record in this State. The record of his appointment with the Governor's certificate under the great seal of the State shall be evidence of appointment.

§ 539. **Massachusetts**—**APPOINTMENT**—By the Governor, with

consent of council. (Fee, \$5.00.) **TERM**—Three years. **OATH** of office to be taken and subscribed to within three months after the appointment, before a justice of the peace or other magistrate of the city or county where he resides or before a clerk of a court of record of his county. **SEAL** to be provided with the words "Commissioner for Massachusetts," and the name of the State, city or county in which he resides. An impression of such seal, with his oath of office and signature, to be filed with the Secretary of the commonwealth. **POWERS**—To administer oaths, take affidavits, depositions, acknowledgments in his State for record in this State, certified under his official seal. **FOREIGN COMMISSIONERS**—Oath of office to be taken before a judge or clerk of a court of record of his country or before a resident United States minister or consul. The same, with an impression of his official seal, shall be filed with the Secretary of this commonwealth. **SPECIAL COMMISSIONERS** appointed and qualified shall have the same powers as justices of the peace in administering oaths, taking depositions, affidavits and acknowledgments, and to issue summonses. Women who are 21 years of age may be appointed by the Governor with consent of the council. **TERM**—Seven years. **FEES**—Oath and certificate, \$1.00; acknowledgments, \$1.00; depositions, per page, 50c; affidavit, 50c; oath on deposition, \$1.00; other fees same as a justice of the peace. Court may add more for depositions. Sealing and sending depositions, \$1.00. Officers must make a detailed statement of fees or forfeit three times the amount paid. Fee list to be posted in his office. Fee to be indorsed on each writ.

§ 540. **Michigan**—**APPOINTED** by the Governor. (Fee, \$3.00.) Must present a written application to the Governor, a recommendation from the Governor of the State or judge of a county court of record where the applicant resides, or other satisfactory evidence of fitness for the office. **TERM**—Five years. **POWERS**—To take acknowledgment of deeds, mortgages or other conveyances of lands, etc., lying in this State, any contract, power of attorney or other writings under seal to be used or recorded in this State. Same must be under his seal of office. **OATH** for the faithful discharge of the duties of the office to be furnished, subscribed to before any party authorized to administer oaths where applicant resides. Same to be filed with the Secretary of this State. **FEES**—No statute regulating. See notaries.

§ 541. **Minnesota**—**APPOINTMENT**—By the Governor. (Fee, —.) **TERM**—Pleasure of the Governor. **POWER**—To take acknowledgments of deeds and other papers pertaining to matters in this State, take oaths, etc. **SEAL**—Official seal must be attached to all papers to be effective. **OATH OF OFFICE**—Must subscribe to an oath before a judge or clerk of a court of record of his State for the faithful discharge of his duties, which oath, with a description or impression of his seal of office to be filed with the Secretary of this State.

§ 542. **Mississippi**—**APPOINTMENT**—By the Governor. (Fee, \$5.) **TERM**—Four years. **POWER**—To administer oaths, certify acknowledgments, take and certify depositions and affidavits, for use or record

in this State, same to be as effectual as if done in this State by an authorized officer. OATH for faithfulness in office to be taken and subscribed to before an officer authorized to administer oaths. FEES—Deposition, certificate and oath, 50c; acknowledgments, 25c; deposition, per 100 words, 10c.

§ 543. **Missouri**—APPOINTMENT—By the Governor. (Fee, \$7.50.) TERM OF OFFICE—The pleasure of the Governor. POWERS—Take acknowledgments or any writings under seal or note to be used and recorded in this State. If in a foreign country, they may certify to the official character, signature or seal of any officer in their district authorized to take acknowledgments or oaths, administer oaths and take and certify depositions. OATH of office to be taken before a judge or clerk of a court of record where he resides, to well and faithfully execute and perform all the duties of his office, under and by virtue of the laws of the State of Missouri. The oath, impression of his official seal and signature to be filed with the Secretary of this State within six months after appointment. FEES—The same as clerks of courts of record. Taking acknowledgments, 50c; administering oaths, 25c; certificate and seal, 50c; affidavits, certificate, 15c; summons, 50c; witness fees, per day, \$1.00; outside county, per day, \$1.25; travel, per mile, 5c; oaths and affidavits, 25c; subpoenas, 25c; making deed, \$1.00.

§ 544. **Montana**—APPOINTMENT—By the Governor, for five years, subject to removal. (Fee, \$5.00.) POWER to act in the State or county where appointed. To certify and take depositions, acknowledgments and affidavits. SEAL—To provide and keep an official seal and authenticate their acts with, having engraved on their name, "Commissioner of Deeds for the State of Montana," and the name of their State. OATH—Their official oath and impression of their seal to be filed with the Secretary of this State within six months from their appointment. FEES—Same as notaries public.

§ 545. **Nebraska**—APPOINTMENT—By the Governor. (Fee, \$1.00.) TERM of office, four years. DUTIES—To take acknowledgments, administer oaths, take depositions. OATH—To take oath of office before an officer authorized to take oaths. SEAL—To procure a seal of office having on his name, "A Commissioner for Nebraska," with the name of his city, county and State. The oath, impression of seal and signature to be filed with the Secretary of State. His acts must be certified to by the Secretary of State before admitted to record or read in evidence. To act only within his place of appointment, and specify the day, city, town or county where act was done. Must personally know or have identified persons making acknowledgments.

§ 546. **Nevada**—APPOINTMENT—By the Governor. (Fee, \$10.00.) TERM of office, four years, unless sooner removed. POWER—To administer oaths, take depositions and affidavits and acknowledgments, to be used in this State, to certify same under his hand and seal. Same have the same effect as if done by a notary. OATH of office to be taken and filed with Secretary of State within six months before acting. SEAL—To procure seal and authenticate his acts therewith. FEES—

Affidavit, deposition, etc., per folio, 30c; oath or affirmation, 25c; sealing an instrument, 50c; acknowledgments or proofs, with seal and certificate, \$1.00; each additional signature, 50c.

§ 547. **New Hampshire**—APPOINTMENT—By the Governor, with the advice of the council. (Fee, \$1.00.) TERM of office, five years. OATH to be taken and subscribed to before a judge of a court of record for faithful performance of duties of the office before acting, same to be filed with Secretary of State within six months. POWERS—To administer oaths, take depositions and affidavits, notify parties of the time and place thereof, take acknowledgments for use or record in this State, in the same manner and with the same effect as a justice of the peace of this State. Commissioners of other States with like powers in this state to be used in other States or appointed by the Supreme Court or justices thereof, shall have power to administer oaths and affirmations, to issue summons to witnesses, to proceed against same for neglect to answer summons or testify, and in all proceedings under his commission that is vested in justices of the peace in like cases. FEES—Controlled by the courts.

§ 548. **New Jersey**—APPOINTED by the Governor. In this State: Fifteen for each ward in first-class cities; eight for each ward in second-class cities; five for each ward in others; one for each city, town, etc., not included in above, for every five hundred population, provided each town have three commissioners. (Fee, \$5.00, and \$1.00 for recording seal.) ELIGIBILITY—Competent. POWERS—To take acknowledgments; may take outside his own State or county. TERM of office begins on the first day of April; five years. REMOVAL from township, town, city or borough, voids the appointment. OATH of office to be taken and subscribed to before the county clerk within two months, before acting. FEES, same as allowed for like services. FOREIGN COMMISSIONERS—APPOINTED by the Governor. (Fee, \$5.00.) TERM OF OFFICE—Three years. REMOVAL of residence from his State vitiates his commission. Overcharging of fees incurs removal from office. POWERS—To take acknowledgments or proofs, to administer oaths, affirmations and affidavits. SEAL—To provide themselves with an official seal to attest their acts with. An impression of same with their oath of office to be sent to the Secretary of this State. FEES—For acknowledgments or proof, \$1.00; each oath, 25c. OATH of office to be taken and subscribed to before the mayor or other chief magistrate of the city where resident or before a judge of the Supreme or Superior Court of his State, to faithfully perform the duties of his office. This before acting. Commissioners for New York and Pennsylvania may reside in this State but not to act here. Women are eligible to the appointment.

§ 549. **New Mexico**—APPOINTMENT—By the Governor. (Fee, \$5.00.) TERM—At the Governor's pleasure. POWERS—To take depositions, affidavits, acknowledgments or proofs of written instruments, and to administer oaths for use in this territory. The same certified under his hand and appropriate seal to be as effectual in law for all

intents and purposes as if done and certified by a justice of the peace in this territory. OATH to be taken and subscribed to before some judge or clerk of a court of record where he is to exercise his appointment, for faithfulness in office, before acting, same to be certified under the hand of the party taking it, and the seal of the court. The oath and certificate, with the commissioner's signature and an impression of his official seal on paper and on wax or wafer, to be filed with the Secretary of the Territory. Same to have the same force as evidence as those of a notary public. FEES allowed to be the same as those allowed for like services by the laws of his State or territory. Commissioners of other States and territories appointed in this territory with like authority, are invested with the authority of a justice of the peace, to issue subpoenas requiring the attendance of witnesses before them to give their testimony by deposition or affidavit, can administer oaths in any matter required or permitted by the law of their State or territory. False swearing is subject to the penal laws of this territory relating to perjury. SEAL of office to be procured to authenticate their acts with.

§ 550. **New York**—APPOINTMENT—In the cities of the State, by the city common council. TERM, two years. Number to be appointed, to be determined at the end of every two years. Not applicable to the city of New York. POWERS, to take acknowledgment of all written instruments. APPOINTMENT in other states and countries—By the Governor. ELIGIBILITY—To reside where appointed. TERM—Four years. OATH of office to be taken, if in the United States, before a justice of the peace, or some other magistrate. If abroad, before a person authorized by the laws of this State to administer oaths in such country, or before a clerk or judge of a court of record. SEAL of office to be provided having on his name and the words "Commissioner of deeds for the State of New York," and the name of the city or county, and the State or country from which appointed; shall file a clear impression of such seal, his signature and oath certified by the officer before whom taken, in the office of the Secretary of State. Upon receipt of same he shall receive instructions and forms. POWERS—Within the place of his appointment to take acknowledgments, or proofs of written instruments, except a bill of exchange, promissory note, or will. To take oaths, same to be admitted as evidence or for record. **NEW YORK CITY**—APPOINTMENT by the board of aldermen. TERM, two years, not required to be approved by the Mayor of city council. Oath of office shall be taken before the commissioner of deeds clerk. DUTIES—To take acknowledgments. In counties where his signature and seal have been recorded, his acts may be performed without his official seal. He is liable to parties injured for any misconduct in office. FEES—If for another State, not to exceed four times the amount allowed by the laws of such State. In no case for an acknowledgment or an oath over \$1.00. **IN GREAT BRITAIN**—Taking acknowledgments and issuing certificates, four shillings, administering an oath, one shilling. In France or other foreign country—Administering an oath, and

certifying, one franc and twenty-five centimes. Taking an acknowledgment or certifying to the correctness of a copy of a patent, etc., five francs. Foreign commissioners must have their acts certified by the secretary of the State of their appointment. Commissioner of deeds appointed by common council of cities, population not less than 300,000 nor more than 550,000, expires on 31st day of December of the even number year, next after appointment to be made in November. TERM—Two years, notification to be made by county clerk. OATH of office to be taken within ten days before county clerk. (Fee, \$1.00.)

§ 551. **North Carolina**—APPOINTMENT by the Governor. TERM—Two years. POWERS to take acknowledgments or proofs of deeds and other instruments in writing, to take the private examination of married women to certify same, and it shall have the same force and effect as if taken in this State. To administer oaths or affirmations, take depositions and examine witnesses. OATH to be taken and subscribed before a justice of the peace in the city or county where he resides, well and faithfully to execute the duties of his office. Before acting, and the same to be filed with the Secretary of this State, who will record and issue the commission and certify the appointment to the clerks of the superior courts, who shall record the same. Clerks of courts of records in other States have power as commissioners of affidavits and deeds. The clerk of the superior court having jurisdiction, shall adjudge deed or instrument acknowledged or proved by other State commissioners. FEES—Affidavit, 40 cents; affixing seal, 25 cents; acknowledgments, 25 cents.

§ 552. **North Dakota**—APPOINTMENT by the Governor. (Fee, \$3.00.) TERM—Six years. POWERS—To take acknowledgments and proofs of instruments, administer oaths, take and certify depositions. SEAL to be procured for authenticating his official acts having engraved on "Commissioner of Deeds for the State of North Dakota," with his surname and at least the initials of his Christian name, also the name of his State or country, with the date his commission expires. Acts to be as effectual in law as those of any officer so authorized in this State, when certified under his seal of office. OATH of office to be taken and subscribed to before a judge or clerk of a court of record or officer having a seal in his State or country, well and faithfully to perform all the duties of his office by virtue of the laws of this State. File with signature and an impression of seal with the Secretary of this State. BOND for \$500, with a surety company as security; to be filed with the Secretary of this State. FEES—Same as notaries in his State.

§ 553. **Ohio**—APPOINTMENT by the Governor. (Fee, \$3.00.) TERM—Three years. ELIGIBILITY—Governor to determine. AUTHORITY, to take affidavits, depositions, and acknowledgments for record in Ohio. SEAL to be procured for authenticating his acts. OATH of office to be taken and subscribed to before a judge of a court of record or some Ohio commissioner within the State or country. Same with signature thereto and an impression of his seal of office

shall be transmitted to the Governor and filed in the office of the Secretary of State. FEES—Swearing witnesses, 25 cents; deposition, each 100 words, and certificate or affidavit, 10 cents; authenticating, sealing up, and directing same, \$1.00; taking acknowledgment, \$2.00; affidavits, \$1.00. Excess of these charges, dishonesty or unfaithfulness in office subjects him to removal by the Governor and public notice.

§ 554. **Oklahoma**—APPOINTMENT by the Governor. (Fee, \$1.00.) TERM, at the Governor's pleasure. DUTIES, to take acknowledgments, or any writings under seal for use in this territory. To administer oaths, take depositions. SEAL, to provide an official seal, having engraved on the words Commissioner of the Territory of Oklahoma, with his name, also the name of his State. OATH of office to be taken and subscribed to, before acting, before a judge or clerk of a court of record. FEES—No statute.

§ 555. **Oregon**—APPOINTMENT by the Governor. (Fee, \$2.50.) TERM—Four years. Jurisdiction where appointed for. POWERS—To take acknowledgments, affidavits, depositions. SEAL of office to be provided, having the arms of this State, in its center, surrounded by "Commissioner for Oregon," with his State name. OATH to be taken and subscribed to before a judicial officer. Oath and impression of his seal to be filed with the Secretary of State.

§ 556. **Pennsylvania**—APPOINTMENT, by the Governor. (Fee, \$5.00.) TERM, five years. Women may be appointed. When they marry must report name to the Governor so their certificate can be changed. POWERS, to take acknowledgments, oaths, for use in this State, and certify same under their hand and seal. Oath of office to be taken before a justice of the peace of his county. Same to be filed with the secretary of this State, all before acting. FEES—Acknowledgments, \$1.00. FOREIGN COMMISSIONERS—TERM, at governor's pleasure. OATH to be taken before a judge or clerk of a court of record, where resident. SEAL to be procured to authenticate their official acts. Impression of seal, signature and oath to be filed with the Secretary of this State. FEES, same as other commissioners.

§ 557. **Porto Rico**—APPOINTMENT, by the Governor. TERM, four years. (Fee, \$1.00.) OATH to be taken before a justice of the peace or other officer of the city, town or territory within three months or forfeit the office. SEAL to be procured having engraved on, his name, "Commissioner for Porto Rico," name of the State or territory, city and county, where he resides. An impression of his seal, oath of office and signature to be filed in the office of the Secretary of the island. DUTIES AND POWERS, to administer oaths, take depositions, affidavits and acknowledgments for record in Porto Rico, same, under his official seal, shall be as effectual as if taken on the island. FEES, taking oaths, \$1.00; acknowledgments, \$1.00; depositions, per page, 50c; administering oath to each deponent, \$1.00; authenticating, sealing up and directing each deposition, \$1.00. Court may allow further fees if necessary. Other fees same as notary publics. Documents may be written in English where notary and parties know the language.

§ 558. **Rhode Island**—APPOINTMENT, by the Governor. (Fee, \$2.00.) TERM, five years. OATH of office to be taken before an authorized officer, and filed with the Secretary of State before acting, within six months. POWERS, to take depositions, acknowledgments, affidavits and oaths for record in this State. SEAL, to provide an official seal with which to authenticate his acts. FEES—No statute.

§ 559. **South Carolina**—APPOINTMENT by the Governor. (Fee, \$3.25.) TERM—At the Governor's pleasure. OATH of office to be taken and subscribed to, before acting; any authorized officer in his city or county can take it. Same with the commission, to be filed with the Secretary of State, who shall give notice of such in one or more gazettes of the State. POWER, to take renunciation of dower, acknowledgments, or any writing under seal, to be used or recorded in this State, when certified under his hand and seal. Also power to administer oaths. Verifications of pleadings, affidavits and proofs of claims made before notaries public in other states shall have the same effect as if made before a commissioner of deeds for this State. To use his official seal. SEAL of office to be provided for authenticating his official acts. FEES—Same as notaries.

§ 560. **South Dakota**—APPOINTMENT, by the Governor. (Fee, \$5.00.) TERM, at the Governor's pleasure. POWERS—Take acknowledgments of deeds and other instruments for record in this State, oaths, and depositions. OATH of office to be taken and subscribed to before a judge or clerk of a court of record having a seal. File with the State Secretary, also copy of seal. SEAL to be procured having on "Commissioner of South Dakota," his surname, and at least the initials of his Christian name, the name of the State commissioned for. To authenticate his official acts with same. FEES—No statute regulating.

§ 561. **Tennessee**—APPOINTMENT, by the Governor. Fee, \$10.00. TERM, four years. POWERS, to take acknowledgments, depositions, affidavits, powers of attorney, probate deeds, etc., for record in this State. Same to conform to Tennessee statutes. OATH of office to be taken. SEAL of office to be procured to authenticate his official acts with.

§ 562. **Texas**—Appointment by the Governor, on the recommendation of the executive of the State or county of applicant. (Fee, \$1.00.) TERM, two years, or his successor qualified. POWERS, to take acknowledgments and proofs, oaths, depositions, same to be as effective as if made in this State. OATH of office to be taken before a clerk of a court of record of his county, subscribed and sworn to under the hand and official seal of the clerk, and filed with the Secretary of this State. SEAL of office to be procured to authenticate all his official acts with, having in the center, "A star of five points," and "Commissioner of the State of Texas" engraved thereon. His acts have no effect unless so certified. FEES, not regulated.

§ 563. **Utah**—APPOINTMENT by the Governor. (Fee, \$5.00.) TERM—At the Governor's pleasure. POWERS—To administer oaths, take depositions, affidavits and acknowledgments, for use or record in

this State. The same when certified under his hand and seal are as effectual in law for all intents and purposes as if done by an authorized officer in the State. OATH to be taken and subscribed to before a judge or clerk of a court of record, in the State of the commissioner, certified by the person taking, under his hand and seal of the court. The oath, certificate, and signature on paper, and a clear impression of his seal to be filed with the Secretary of this State before acting. SEAL of office to be procured, upon which must be engraved his name, the words "Commissioner of Deeds for the State of Utah," and the name of the State for which he is commissioned. All his official acts must be authenticated with this seal. The date of expiration of his commission must be stated in all his official acts. Commissioners for other States residing in this State shall file with the Secretary of State a certified copy of their commission, together with a statement of their place of residence. FEES—Affidavits, depositions, first folio, 50c; subsequent folios, 15c; acknowledgments or proofs of deeds, including certificate and seal, for first signature, 50c each; additional signature, 25c; oaths or affirmation, 25c; every certificate and seal, 50c.

§ 564. **Vermont**—APPOINTMENT by the governor. (Fee, \$5.00.) The applicant must have the endorsement of the Governor or a member of the supreme bench of his State. TERM, five years. POWERS, to take depositions, affidavits, oaths and acknowledgments, for use in this State. OATH of office to be taken before a magistrate of his locality. BOND required for \$5,000, approved by the Governor, before acting, and filed with the Secretary of State. SEAL, to procure an official seal with which to authenticate their official acts. FEES allowed, not regulated by statute.

§ 565. **Virginia**—APPOINTMENT by the Governor. (Fee, \$5.00.) TERM at the pleasure of the Governor for two years. OATH of office required, can be taken before a justice of the peace or other commissioner or one authorized to take oaths. SEAL of office to be procured to authenticate their acts with. POWERS—To take acknowledgments, depositions, oaths.

§ 566. **Washington**—APPOINTMENT, by the Governor. (Fee, \$5.00.) TERM of office, four years. POWERS, to administer oaths, take depositions and affidavits, to be used in this State, also acknowledgments for record. OATH, before acting, they shall subscribe to an oath before any officer having an official seal and so authorized, a certificate of which, to be filed with the Secretary of State. SEAL of office to be procured having on his name and the words "Commissioner of deeds for the State of Washington," and the name of the State for which he is commissioned, with date of expiration of his commission.

§ 567. **West Virginia**—APPOINTMENT, by the Governor. (Fee, \$5.00.) TERM OF OFFICE, four years, Governor to notify the Legislature. POWERS, to administer oaths, take affidavits, depositions and acknowledgments for use in this State. SEAL to be procured designating his name, residence, and the words (either full or intelligently abbrevi-

viated), "Commissioner for West Virginia," and name of his State. An impression of his seal and signature to be filed with the Secretary of this State. His certificate to be authenticated by his signature and official seal. OATH for faithfulness in office to be taken before a justice of the peace, notary, court or judge of the county in which he resides, or where his duties are to be performed, and certified to by the officer. Not to act until qualified, under penalty, and to qualify within 60 days, otherwise office is vacant. FEES—See notaries.

§ 568. **Wisconsin**—APPOINTMENT by the Governor. (Fee, \$5.00.) TERM, four years. OATH of office to be taken before a judge or clerk of a court of record where the applicant resides. SEAL of office to be procured with which he shall authenticate his acts. An impression of same, with his oath of office, to be filed with the Secretary of this State. POWERS to take acknowledgments, depositions and oaths, certify same with his hand and official seal. FEES allowed, same as other officers.

§ 569. **Wyoming**—APPOINTMENT by the Governor. (Fee, \$5.00.) TERM, at the Governor's pleasure. POWER, to take depositions, acknowledgments, affidavits and oaths, for use in this State. SEAL of office to be procured, with which all his official acts shall be authenticated. OATH of office to be taken and subscribed to before an authorized officer having an official seal, where applicant resides, same with signature and official seal impression to be filed with the Secretary of this State. Must state in each certificate the date of expiration of his commission. FEES allowed, same as notaries.

§ 570. **Canada**—APPOINTMENT by the Governor in council. (Fee, \$10.00.) DUTIES—To take acknowledgments, releases of dower, attestations under oath, affidavits.

## CHAPTER VII.

### FORMS.

§ 571. The following forms are presented as a guide. It is the substance which the statutes require more than a literal copy.

Observe carefully the preceding chapters for the full requirements, as to witnesses, seals, personal appearance and separate examinations for acknowledgments, deeds, etc.

Depositions vary so much for each case that it is hardly necessary to enumerate for each State. Also affidavits.

Follow carefully the requirements of the chapter on Negotiable Instruments and the statutory requirements of each State.

### ACKNOWLEDGMENTS.

#### FORMS RECOMMENDED BY THE AMERICAN BAR ASSOCIATION.

##### No. 1. In CASE OF NATURAL PERSONS.

On this ..... day of ....., 18.., before me personally appeared ....., to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as ..... free act and deed.

##### No. 2. ACTING BY ATTORNEY.

On this ..... day of ....., 18.., before me personally appeared ....., to me known to be the person who executed the foregoing instrument in behalf of ....., and acknowledged that ..he.. executed the same as the free act and deed of said .....

##### No. 3. A CORPORATION.

On this ..... day of ....., 18.., before me appeared ....., to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer) of (describe corporation). and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its

board of directors (or trustees), and said ..... acknowledged said instrument to be the free act and deed of said corporation (or association.)

#### No. 4. (Alabama.) HUSBAND AND WIFE.

State of ..... }  
County of ..... } ss.

I, ....., hereby certify that C. B. and A. B., whose names are signed to the foregoing instrument, known to me, personally appeared, and being made acquainted with the contents thereof, acknowledged the same this day to be their free act and deed, for the purposes therein expressed; said A. B., wife of the said C. B., was examined separate and apart from her husband.

Given under my hand and seal of office, this ..... day of ....., A. D. 18..

#### No. 5. (Alabama.)

State of ..... }  
County of ..... } ss.

I, M. N. (give officer's title), hereby certify that A. B., whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date. Given under my hand, this ..... day of ....., 18..

#### No. 6. (Arizona.)

Territory of....., }  
County of..... } ss.

Before me, ....., on this day, personally appeared ....., known to me (or proved to me on the oath of) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this ..... day of ....., A. D. ....

My commission expires ..... day of ....., A. D. ....

#### No. 7. MARRIED WOMAN.

Territory of....., }  
County of..... } ss.

Before me, ....., on this day, personally appeared ....., wife of ....., known to me (or proved to me on oath of .....) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this ..... day of ....., A. D. ....

My commission expires ..... day of ....., A. D. ....

## No. 8. (Arkansas.)

State of ..... }  
 County of ..... } ss.

On this ..... day of ....., 18.., before me, a notary public in and for said county, duly authorized by the laws of Arkansas, personally appeared C. D., to me personally known (or proved by the subscribing witnesses) to be the person whose name appears as grantor to the foregoing instrument, and stated that he executed the same for the consideration and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal, as such notary public in and for said county, on this ..... day of ....., 18..

## No. 9. (California.)

State of ..... }  
 County of ..... } ss.

On this ..... day of ....., in the year ....., before me (officer's name and quality of officer), personally appeared ....., known to me (or proved to me on the oath of .....)\* to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

## No. 10. CORPORATION.

The name of the president or secretary must be inserted, together with the name of the company, viz., same as above to then follow: (\*) to be the president (or secretary) of the corporation who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

## No. 11. ATTORNEY IN FACT.

Begin (\*) to be the person whose name is subscribed to the within instrument as the attorney in fact of ....., and acknowledged to me that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact.

## No. 12. (Colorado.)

State of Colorado, }  
 County of ..... } ss.

..... appeared before me this ..... day of ....., 18.., in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal. ....  
 .....

## No. 13. (Connecticut.) BY HUSBAND AND WIFE.

State of ..... }  
 County of ..... } ss.

....., A. D. 18.., then and there before me, ....., within and for

the county and State aforesaid, duly commissioned and acting as such, personally appeared ..... and ....., his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed, before me.

Witness my hand and seal of office, on this ..... day of ....., A. D. 18..

#### No. 14. (Delaware.)

State of ....., }  
..... County. } ss.

Be it remembered, that on this ..... day of ....., A. D. 18.., personally came before me, ....., a notary public for the State of Delaware, ..... and ....., his wife, parties to this indenture, known to me personally (or proved upon the oath of ..... ) to be such, and severally acknowledged this indenture to be their deed; and the said ..... being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threat, or fear of her husband's displeasure.

Given under my hand and seal of office the day and year aforesaid.

#### No. 15. (District of Columbia.)

..... County (or city, etc.) to wit:

I, ....., a (official title) in and for the county (or city, etc.) aforesaid in the State of ....., do hereby certify that ....., a party to a certain deed, bearing date on the ..... day of ....., and hereunto annexed, appeared before me in the county (or city) aforesaid, the said ..... being personally well known to me, as (or proved by the oaths of credible witnesses before me to be) the persons.. who executed the said deed and acknowledged the same to be his (her or their) act and deed.

Given under my hand and seal this ..... day of .....

.....

#### No. 16. (District of Columbia.) WIFE.

..... County (or city) to wit:

I, ..... (officer's title), in the county aforesaid, in the State of ....., do hereby certify that ....., the wife of ....., party to a certain deed bearing date on the ..... day of ..... and hereunto annexed, personally appeared before me in the county (or city) aforesaid, the said ..... being well known to me (or proved on the oaths of credible witnesses before me to be) the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said ....., acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this ..... day of .....

.....

## No. 17. (Florida.)

State of ..... } ss.  
 County of ..... }

Before me personally came C. F., to me well known as the person who executed the foregoing deed, and acknowledged that he executed the same for the purposes therein expressed, and prays that it may be admitted to record.

In witness whereof I have hereunto set my hand and seal, this ..... day of ....., A. D. 18..

## No. 18. (Georgia.) MARRIED WOMAN.

I, A. B., the wife of C. D., do declare that I have freely and without any compulsion signed, sealed and delivered the above instrument of writing, passed between D. E. and C. D., and I do hereby renounce all title or claim to dower that I might claim or be entitled to, after the death of C. D., my said husband, to or out of the lands or tenements therein conveyed. In witness whereof, I have hereunto set my hand and seal.

Before me, John Smith, a notary public, personally came A. B., the wife of C. D., to me known to be the person whose signature is attached to the foregoing deed, and did declare that she did freely and voluntarily and without compulsion from her husband sign, seal and deliver the said deed for the purposes therein mentioned.

Sworn to and subscribed before me this ..... day of ....., 18..

## No. 19. ACKNOWLEDGMENTS.

Hawaiian Islands } ss.  
 Island of..... }

On this ..... day of ..... A. D., personally appeared before me A B, (\*) known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

When the party is unknown to the officer but identified by a witness, insert (\*) satisfactorily proved to me to be the person described in and who executed the written instrument, by the oath of C D, a credible witness for that purpose, to me known and by me duly sworn, and he the said A B acknowledged that he executed the same freely and voluntarily for the uses and purposes therein set forth.

## No. 20. (Idaho).

State of Idaho, } ss.  
 County of..... }

On this ..... day of ....., in the year of ....., before me (officer's name and office) personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument,\* and acknowledged to me that he (or they) executed the same.

### No. 21. CERTIFICATE OF ACKNOWLEDGMENT OF MARRIED WOMAN.

Same as above, to \* adding described as a married woman and upon an examination without the hearing of her husband I made her acquainted with the contents of the instrument and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

### No. 22. (Illinois.)

State of ..... }  
County of ..... } ss.

I, ....., hereby certify that ....., ....., who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand ..... seal, this ..... day of ....., A. D. ....

### No. 23. (Illinois.) PARTY PERSONALLY KNOWN TO THE OFFICER..

State of Illinois, }  
County of Cook. } ss.

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (and if acknowledged by wife, her name, and add "his wife"), personally known to me to be the same person.. whose name is (or are) subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he (she or they) signed, sealed and delivered the said instrument as his (her or their) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January, A. D. 1896.

JOHN DOE,

Notary Public.

### No. 24. (Illinois.) PARTY NOT KNOWN.

State of Illinois, }  
County of Cook. } ss.

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (proved by James Jackson, the subscribing witness), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January,  
A. D. 1896. JOHN DOE,

JAMES JACKSON (Seal), Notary Public.  
Subscribing Witness.

No. 25. (Illinois.) WITH HOMESTEAD WAIVER.

State of ..... } ss.  
County of ..... }

I, ....., a notary public in and for the said ....., in the State aforesaid, do hereby certify that ....., personally known to me to be the same person.. whose name.. .... subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that ..he.. signed, sealed and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, the .... day of .....,  
A. D. 18... ..,

Notary Public.

No. 26. (Illinois.) FOR CORPORATION.

State of Illinois, } ss.  
County of..... }

I, ....., a notary public in and for the county and State aforesaid, do hereby certify that ....., president, and ....., secretary of the ....., who are personally known to me to be the same persons whose names are subscribed to the foregoing ..... as such ..... president and secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said ..... for the uses and purposes therein set forth, and caused the corporate seal of said company to be thereto attached.

Given under my hand and notarial seal, this ..... day of .....,  
18.. ..,

Notary Public.

No. 27. (Illinois.) ACKNOWLEDGMENT TO CHATTEL MORTGAGE BY A NON-RESIDENT.

This chattel mortgage was acknowledged before me by Richard Smith, this 15th day of July, 1895.

Witness my hand and seal.

JOHN DOE,

No. 28. (Indiana.)

Before me, E. F. (a judge or justice as the case may be), this ..... day of ....., A. D. ....., A. B. acknowledged the execution of the annexed deed (or mortgage).

(Signature and title.)

## No. 29. (Indian Territory.) ACKNOWLEDGMENT.

United States of America,  
Indian Territory,  
Southern District.

On this, the ..... day of ....., 19.., before me, ....., a United States Commissioner within and for the said District of the Indian Territory, appeared in person ....., to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof I have hereunto set my hand as such United States Commissioner, in said District and Territory, on the ..... day of ....., 19...

.....  
United States Commissioner.

## No. 30. IOWA.

State of ..... }  
County of ..... } ss.

On this ..... day of ....., A. D. ....., before me personally appeared A B (or A B and C D), to me known to be the person.. named in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as (his or their) voluntary act and deed.

.....  
Notary Public in and for said county.

## No. 31. (Iowa.) CORPORATION.

Same as above and follow with:

On this ..... day of ....., A. D. ....., before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer) of (describe the corporation) and that the seal affixed (if they have one) to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said A B acknowledged said instrument to be the voluntary act and deed of said corporation.

## No. 32. (Kentucky.) MARRIED WOMAN OUT OF THE STATE.

Commonwealth (or .....), }  
County (or) of ....., } solicit.

I, ..... (title of officer), do certify that this instrument of writing from ..... and wife, ....., was this day produced to me by the parties, and the contents and effect of the instrument being explained to the said ..... by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed and consented that the same might be recorded.

(Seal.) Given under my hand and seal of office.

If the husband join in the deed and acknowledge before the officer, his acknowledgment may be certified with that of the wife, following the word "parties," thus "which was acknowledged by the said C. D. to be his act and deed."

### No. 33. (Kentucky.) MARRIED WOMAN IN THE STATE.

Officer to simply certify that it was acknowledged before him and where.

### No. 34. (Louisiana.)

State of ..... }  
County of ..... } ss.

Be it remembered, that on this ..... day of ....., 18.., before me, a notary public in and for said county duly authorized, personally appeared A. B., to me known to be the party who executed the within instrument, and acknowledged to me that he did sign, seal and deliver the same, as his free act and deed for the uses and purposes therein stated.

In witness whereof, I have hereunto set my hand, and affixed my official seal and signature this ..... day of ....., 18..

### No. 35. (Maine.)

State of ..... }  
County of ..... } ss.

..... day of ....., 18.., personally appeared C. F. and acknowledged the foregoing instrument to be his free act and deed.

.....

### No. 36. (Maryland.) ACKNOWLEDGMENT.

State of Md., ..... County, to wit:

I hereby certify, that on this ..... day of ....., in the year ....., before the subscriber (name of official) personally appeared ..... and (name of married woman) his wife and did each acknowledge the foregoing deed to be their respective act.

.....  
.....

### No. 37. (Massachusetts.) ACKNOWLEDGMENT.

State of Mass., }  
County of ..... } ss.

....., on this ..... day of ....., 18.., before me personally appeared A. B., to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as ..... free act and deed.

### No. 38. BY ATTORNEY.

On this ..... day of ....., 18.., before me personally appeared A. B., to me known to be the person who executed the foregoing

instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

#### No. 39. CORPORATIONS.

On this ..... day of ....., 18.., before me appeared A. B., to me personally known, who being by me duly sworn (or affirmed) did say that he is the president (or what officer) of (name of corporation) and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

If the corporation has no seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that," and add, at the end of the affidavit clause, the words "and that said corporation has no corporate seal." In all cases add signature and title of the officer taking the acknowledgment.

(Michigan.) SAME FORMS AS MASSACHUSETTS.

(Minnesota.) SAME AS MASSACHUSETTE.

#### No. 40. (Mississippi.)

Caption.

Personally appeared before me, ..... (officer's name and office), the within named A. B., who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand, this the ..... day of ....., A. D. ....

#### No. 41. A WITNESS.

Caption.

Personally appeared before me, ....., C. D., one of the subscribing witnesses to the foregoing instrument, who being duly sworn, depose and saith that he saw the within named A. B., whose name is subscribed thereto, sign and deliver the same to the said E. F. (or that he heard the said A. B. acknowledge that he signed and delivered the same to the said E. F.); that he, this affiant, subscribed his name as a witness thereto in the presence of the said A. B.

In all cases add signature and title of the officer taking, and attach his official seal if he have one.

(Mississippi, See No. 125A.)

#### No. 42. (Missouri.) SEE MASSACHUSETTS.

(Montana.) SEE MASSACHUSETTS.

(Nebraska.) SEE IOWA. (Add one witness.)

#### No. 43. (Nevada.) ACKNOWLEDGMENT.

State of Nevada, }  
County of ..... } ss.

On this ..... day of ....., A. D. ...., personally appeared before me (name of officer) in and for said county, A. B., known to me

to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(The exact form is not required, the substance is.)

(New Hampshire.) SEE MASSACHUSETTS.

No. 44. (New Jersey.)

State of ..... } ss.  
County of..... }

Be it remembered that on this ..... day of ....., 18.., before me, a notary public in and for said county, being duly authorized, personally came C. F. and M. F., his wife, who I am satisfied are the grantors in the foregoing deed, and I having made known to them the contents thereof, they each acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned.

(New Mexico.) SAME AS MASSACHUSETTS.

No. 45. (New York.) BY A CORPORATION AND CERTIFICATE.

State of New York, } ss.  
County of..... }

On the ..... day of ....., in the year ....., before me personally came ....., to me known, who, being by me duly sworn, did depose and say that he resided in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

No. 46. (North Carolina.)

State of....., } ss.  
.....County. }

I, A. B. (title of officer), do hereby certify that (name of grantor, and if acknowledged by wife, her name, and add his wife), personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) deed of conveyance (or such instrument as it is), and (if the wife is a signer) the said (here give wife's name), being by me privately examined separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same, freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto. Witness my hand and seal (private or official), this ..... day of ....., A. D. ....

....., (Seal.)

## No. 47. (North Dakota.)

State of ..... }  
 County of ..... } ss.

On this ..... day of ....., in the year ....., before me personally appeared ....., known to me (or proved to me on the oath of ..... ) to be the\* person who is described in and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

If a corporation add \* (name of officer) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

## No. 48. (Ohio.) BY HUSBAND AND WIFE.

State of ..... }  
 County of ..... } ss.

Be it remembered that on the ..... day of ....., before me, a notary public in and for said county, personally appeared A. B. and C. B., his wife, the grantors in the foregoing deed, personally known to me, and acknowledged the signing and sealing of the same to be their act and deed for the purposes therein mentioned. And the said C. B., wife of the said A. B., being examined separate and apart from her husband, and the contents having been made known to her by me, declared that she did voluntarily sign and acknowledge the same and is satisfied therewith as her act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal. ....

Two witnesses.

## No. 49. (Oklahoma.)

Territory of Oklahoma, }  
 ..... County. } ss.

Before me, ....., in and for said county and territory, on this ..... day of ....., 18.., personally appeared ..... and ....., to me known to be the identical person.. who executed the within and foregoing instrument, and acknowledged to me that ..... executed the same as ..... free and voluntary act and deed for the uses and purposes therein set forth. ....

## No. 50. (Oregon.)

State of Oregon, }  
 County of ..... } .

Before the undersigned, a justice of the peace for the precinct of ....., in the county and State aforesaid, personally appeared the within named A. B., and C. D., his wife, to me known to be the individuals described in and who executed the within conveyance, and the said A. B. acknowledged that he executed the same, and the said C. D., being by me examined separate and apart from her said husband, then and there acknowledged that she executed such conveyance freely and without fear or compulsion from any one, this ..... day of ....., 18..

E. F., Justice of the Peace.

## No. 51. (Pennsylvania.)

Corporation's power to Attorney to acknowledge for the corporation.

I hereby certify that on this ..... day of ....., in the year of our Lord ....., before me the subscriber (title of officer) personally appeared (name of attorney) the attorney named in the foregoing (name of instrument) and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said (name of instrument) to be the act of the said (corporation's name).

Witness my hand and seal the day and year aforesaid.

## No. 52. (Pennsylvania.)

State of ..... }  
County of ..... } ss.

Be it remembered that on this ..... day of ....., before me, a notary public in and for said county, duly authorized, personally came C. D., and A. D., his wife, personally known (or proved) to me, and acknowledged the signing and sealing of the within instrument to be their act and deed, that the same might be recorded as such. And the said A. D., being of lawful age, was examined by me separate and apart from her husband and the contents made known to her, she declared that she did voluntarily and of her own free will and accord and as her own free act and deed, without any compulsion from her husband, deliver the same.

In witness whereof, I have hereunto set my hand and official seal, this ..... day of ....., A. D. ....

(One witness.)

## No. 53. (Rhode Island.) HUSBAND AND WIFE.

State of Rhode Island, }  
County of ..... } ss.

In the town of ....., in the said county and State, on this ..... day of ....., A. D. 18.., personally appeared before me the within named C. D., and acknowledged the within instrument by him signed to be his free, voluntary act and deed.

And at the same time came A. D., wife of the said C. D., being by me examined separate and apart from her husband, acknowledged and declared the said instrument by her signed, to be her free act and deed, and that she did not wish to retract it.

## No. 54. (South Carolina.) MARRIED WOMAN.

State of South Carolina, }  
..... County. } ss.

I, F. G. (officer's title), do hereby certify unto all whom it may concern that E. B., the wife of the within named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce,

release and forever relinquish unto the within named C. D., his heirs and assigns, all her interests and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal, this ..... day of ....., A. D.  
 ..... (L. S.) Signed, F. G. E. B.

Official seal of officer to be attached.

#### No. 55. (South Dakota.)

State of South Dakota, }  
 County of ..... } ss.

On this ..... day of ....., in the year ..... before me personally appeared ....., known to me (or proved to me on the oath of ..... ) to be the person who is described in and who executed the within instrument and acknowledged to me that he (or they) executed the same.

#### No. 56. (Tennessee.)

State of Tennessee, }  
 ..... County. } ss.

Personally appeared before me, clerk of the court of said county, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this ..... day of ....., 18..

#### No. 57. (Tennessee.) BY CORPORATION.

State of Tennessee, }  
 County of ..... } ss.

Before me, ....., the State and county aforesaid, personally appeared ....., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the president (or other officer authorized to execute) of the ....., the within named bargainer, a corporation, and that he as such ....., being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as .....

Witness my hand and seal, at office in ..... this ..... day of .....

Corporation seal not necessary.

#### No. 58. (Texas.)

State of ..... }  
 County of ..... } ss.

Before me, ....., on this day personally appeared ....., known to me (or proved to me on the oath of ..... ) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this ..... day of .....,  
 A. D. ....  
 (Seal.) .....

## No. 59. (Utah.)

State of Utah, }  
 County of ..... } ss.

On the ..... day of ....., A. D. ...., personally appeared before me, ....., the signer of the above instrument, who duly acknowledged to me that he executed the same. ....

This properly executed by an authorized officer and attached to the instrument, is sufficient.

## No. 60. (Utah.) GRANTOR UNKNOWN TO OFFICER.

State of Utah, }  
 County of ..... } ss.

On this ..... day of ....., A. D. ...., personally appeared before me A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same.

## No. 61. (Utah.) BY CORPORATION.

State of Utah, }  
 County of ..... }

On the ..... day of ....., A. D. ...., personally appeared before me A. B., who being by me duly sworn (or affirmed), did say, that he is the president (or other officer or agent) of (name corporation), and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by resolution of its board of directors as the case may be) and said A. B. acknowledged to me that said corporation executed the same.

## No. 62. (Vermont.)

State of ..... }  
 County of ..... } ss.

The ..... day of ....., A. D. 18.., personally appeared C. G., and A. G., his wife, to me known, and severally acknowledged the within instrument, signed and sealed, to be their free act and deed, before me.

(Two witnesses.)

## No. 63. (Virginia.)

County of ....., to wit:

I, ..... (officer's name and title), for the county aforesaid, in the State of ....., do certify that E. F., whose name is signed to the writing above, bearing date on the ..... day of ....., has acknowledged the same before me in my county aforesaid. Given under my hand, this ..... day of .....

## No. 64. COMMISSIONER OF DEED'S CERTIFICATE.

State of ....., } to wit.  
 ..... }

I, ....., a commissioner appointed by the Governor of Virginia for the said State of ....., do certify that E. F., whose name is signed to the writing above, bearing date on the ..... day of ....., has acknowledged the same before me, in my State aforesaid. Given under my hand, this ..... day of ....., A. D. 18..

## No. 65. (Washington.)

State of Washington, } ss.  
 County of ..... }

I, ....., do hereby certify that on this ..... day of ....., 18.., personally appeared before me ..... (and his wife if she joins), to me known to be the individuals described in and who executed the within instrument, and acknowledged that ..he.. signed and sealed the same as ..... free and voluntary act and deed, for uses and purposes therein mentioned. Given under my hand and official seal, this ..... day of ....., A. D. 18..

## No. 66. (Washington.) CORPORATION.

State of ..... } ss.  
 County of ..... }

On this ..... day of ....., A. D. ....., before me personally appeared ....., to me known to be the (name of officer of the corporation) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

.....

## No. 67. (West Virginia.)

State of ..... } ss.  
 County of ..... }

I, ....., a commissioner, appointed by the Governor of the State of West Virginia, for the said State of ....., do certify that ....., whose name is signed to the writing above, bearing date on the ..... day of ....., has this day acknowledged the same before me, in my said .....

Given under my hand, this ..... day of .....

## No. 68. (West Virginia.) CORPORATION.

State of ..... }  
 County of ..... } ss.

I, ....., a notary of the said County of ....., do certify that ..... personally appeared before me in my said ....., and being by me duly sworn (or affirmed), did depose and say that he is the president of (or other officer) the corporation described in the writing above, bearing date the ..... day of ....., 18.., authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said ..... acknowledged the said writing to be the act and deed of said corporation.

If the corporation has no corporate seal, omit the words "seal affixed to said writing is the corporate seal of said corporation" and say "said corporation has no seal," and in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the words "executed."

## No. 69. (Wisconsin.)

State of Wisconsin, }  
 ..... County. } ss.

Personally came before me this ..... day of ....., 18.., the above (or within) named ....., and ....., his wife, to me known to be the persons who executed the foregoing (or within) instrument, and acknowledged the same.

CERTIFICATE TO BE ATTACHED TO AN ACKNOWLEDGMENT  
 TAKEN OUTSIDE THIS STATE.

State of ..... }  
 County of ..... } ss.

I, ....., clerk of the ....., in and for said county, which is a court of record, having a seal (or I, ....., the Secretary of State of ..... State), do hereby certify that ....., by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said State (or territory) to take and certify acknowledgments or proofs of deeds in said State, and further that I am well acquainted with the handwriting of said ....., and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or State), this ..... day of ..... 18..

## No. 70. (Wyoming.)

State of Wyoming, }  
 County of ..... }

I (name of officer and title) do hereby certify that (name of gran-

tor, if wife joins add her name, "and his wife") personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth (if homestead is released state, including the release and waiver of the right of homestead).

## CANADA.

## No. 71.

I hereby certify that ....., personally known to me, appeared before me and acknowledged to me that ....., the person.. mentioned in the annexed instrument as the maker.. thereof, and whose name ..... subscribed thereto as part ..... that ..... know.. the contents thereof, and that ..... executed the same voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at ....., this ..... day of ....., in the year of Our Lord one thousand eight hundred and ninety .....

## No. 72. FOR WITNESS.

I hereby certify that ....., personally known to me, appeared before me and acknowledged to me that ....., the person whose name is subscribed to the annexed instrument as witness, and having been duly sworn by me, did prove to me that ..... did execute the same in his presence voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at ....., British Columbia, this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety .....

## AFFIDAVITS.

## No. 72A. GENERAL AFFIDAVIT.

State of..... }  
County of..... } ss.

.....of the ..... of ..... County of .....and State of ..... being duly sworn, doth depose and say, that .....  
And further this deponent says not.

1.....

Subscribed and sworn to before me this ..... day of ..... A. D. 190....

2.....

(1) This line is for signature of affiant.

(2) These two lines are for signatures and title of officer administering oath.

## No. 73. AFFIDAVIT OF ACCOUNT.

State of ....., }  
..... County. } ss.

I, William Smith, of the firm of Smith, Brown & Co., do solemnly

swear that the several items mentioned in the annexed account are just and true; that the articles were furnished, as therein charged, and that the amount claimed, to wit, the sum of fifty dollars, is due and unpaid, after allowing all just credits.

Subscribed and sworn to before me, this ..... day of ....., 18..

Notary Public.

#### No. 73A. AFFIDAVIT OF HEIRSHIP.

State of Pennsylvania, }  
County of ..... }

In the matter of the real estate of John J. Belst, of Philadelphia, lately deceased.

To whom it May Concern: We respectfully make oath to show:

That, John J. Belst died by railroad accident ..... in the State of ..... owning and seized of the following described real estate situated in the City of Chicago, County of Cook and State of Illinois, to-wit:

Lots 2 and 3 in Block 5 in Cornell or Subdivision in Sections 6 and 35, Township 36 North, Range 14 East of Principal Meridian in Cook County, Illinois. That John J. Belst and Ellen L. B., his wife, had no children or heirs of their bodies. That the names of the only heirs of the said John J. Belst, deceased, and the interests of each of said heirs in the above described premises of which said John J. Belst died seized, are as follows: \* \* \* (names and residences, and interests of each).

Sworn and subscribed to before me this ..... day of ..... A. D. 190....

#### No. 74. LOSS OF NOTES.

State of ..... }  
County of ..... } ss.

I, ....., on oath, depose and say: That on the ..... day of ....., A. D. 18., I, ....., together with ....., made a certain deed of trust to ....., to secure the payment of the ..... certain principal promissory note of that date, for ..... dollars, payable in ..... years from said date, to the order of ....., with interest at ..... per cent. per annum, payable in semi-annual installments of \$. .... each, which semi-annual payments were evidenced by ..... coupon interest notes, as in said deed described. That said coupons were numbered from 1 to ....., inclusive, and in the order they respectively became due, that said deed was filed in the office for the registry of deeds for ..... County, State of ....., on the ..... day of ....., A. D. 18., and recorded in Book ....., of ....., page .....; that all of said notes have been paid and canceled, and are herewith produced, excepting coupons numbered ....., which, although diligent search has been made therefor, cannot be found; that said missing notes have been either mislaid, lost or destroyed, and therefore cannot now be

produced; that this affidavit is made to obtain the release of the aforementioned deed of trust.

Subscribed and sworn to before me, at ....., this ..... day of ....., A. D. 18.. Witness my hand and official seal.

.....  
Notary Public.

### MEMORANDA.

For reason of the statements contained in the foregoing affidavit, I have this ..... day of ....., A. D. 18., executed a release of the aforementioned deed of trust. ....,

Trustee.

### No. 75. (Georgia.) AFFIDAVIT.

You, A. B., do swear (or affirm) that the foregoing defense is true, to the best of your knowledge and belief, so help you God.

Where material words are omitted by accident or mistake in an affidavit to appeal in forma pauperis, such omission is amendable.

Affidavits of illegality are, upon motion and leave of court, amendable instantan by the insertion of new and independent grounds; provided, the defendant will swear that he did not know of such grounds when the original affidavit was filed.

All affidavits for the foreclosure of liens, including mortgages, and all affidavits that are the foundation of legal proceedings, and all counter affidavits, shall be amendable to the same extent as ordinary declarations, and with only the restrictions, limitations, and consequences now obtaining in the case of ordinary declarations and pleas. In all civil cases founded on unconditional contracts in writing, where there is an issuable defense, and where the defendant does not reside in the county where suit is pending, the agent or attorney of the defendant may make oath to the plea and swear it to be true according to the best of his knowledge and belief. Where claimants are unable to give bond and security as required, it shall and may be the privilege of such claimants to file, in addition to the oath required, an affidavit as follows:

I, A. B., do swear that I do not interpose this claim for delay only; that I bona fide claim the right and title to the same; that I am advised and believe that the claim will be sustained; and that from poverty I am unable to give bond and security as now required by law.

When said affidavit shall have been made and delivered to the levying officer, the same shall suspend the sale in the same manner as if bond and security had been given.

Attorneys cannot take affidavits required of their clients, unless specially permitted by law.

Oath includes affirmation.

## No. 76. (Illinois.) AFFIDAVIT OF AGE OF CHILD.

## SCHOOL CERTIFICATE.

Ogden School.

Chicago, June 10, 1906.

This certifies that Mary Smith, of the 4th grade, can read and write legibly, simple sentences. This also certifies that according to the records of this school, and in my belief, the said Mary Smith was born at Covington, in Kenton County, Ky., on the 10th day of June, 1890, and is now sixteen years old.

JOHN SMITH, father.

114 Grand St.

(Signature of teacher) ..... grade.

(Name of principal.)

Correct. (Name of School.)

This certifies that I am father of Mary Smith, and that she was born at Covington, Kenton County, Kentucky, on the 10th day of June, 1890, and is now sixteen years old.

JOHN SMITH.

There personally appeared before me the above named John Smith, and made oath that the foregoing certificate by him signed is true to the best of his knowledge. I hereby approve the foregoing certificate of Mary Smith, height four and one-half feet, weight one hundred pounds, complexion fair, hair light, having no sufficient reason to doubt that she is of the age therein certified.

This certificate belongs to Mary Smith, and is to be surrendered to her whenever she leaves the service of the corporation or employer holding the same; but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools, or where there is no superintendent of schools, to the school board.

WILLIAM JONES,

115 Madison St.

Chicago, Ill.

These certificates come under the direction of the School Board in Illinois.

## No. 77. (Indian Territory.)

In the United States Court for the Southern District of Indian Territory.

Sitting at Purcell, March Term, A. D. 1897.

Richard Roe, plaintiff,

Against

John Doe, defendant.

The plaintiff, Richard Roe, states that the defendant, John Doe, is a nonresident of Indian Territory.

RICHARD ROE.

Subscribed and sworn to before me this ..... day of .....

.....

Notary Public.

## No. 78. BY ATTORNEY—SAME HEADING.

John Jones states that he is the attorney for the plaintiff, Richard Roe, who is absent from the Southern District of the Indian Territory, and that the defendant, John Doe, is a nonresident of Indian Territory.

JOHN JONES.

Subscribed and sworn to before me this ..... day of .....

.....

Notary Public.

## No. 79. (West Virginia.) VERIFICATION OF PLEADING.

State of West Virginia, ..... County, to wit:

A. B., the plaintiff (or defendant) named in the foregoing bill (or answer), being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

A. B., plaintiff (or defendant).

Taken, sworn to and subscribed before me this ..... day of .....

.....

Officer.

## No. 80. FOR INJUNCTION.

A bill of injunction to be sworn to by a party other than the litigants, must show what is made on information and belief.

A. B., being duly sworn, says that he is the agent (or attorney) of the plaintiff (or defendant) named in the foregoing bill (or answer), and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations he believes them to be true.

C. D., agent (or attorney).

## No. 81. (New Mexico.)

I do solemnly swear (or affirm) that the within and before mentioned account is true and correct, and that the services have been rendered (or articles have been furnished) as stated, and that no part thereof has been paid.

## No. 82. AFFIDAVIT IN ATTACHMENT.

Territory of New Mexico, }  
County of ..... } ss.

This day personally appeared before me the undersigned, clerk of the ..... court, A. B. (or C. D., agent for A. B.), and, being duly sworn, says that E. F. is justly indebted to the said A. B. in the sum of ..... after allowing all just off-sets, and that the said E. F. is (..... set forth the cause of attachments).

A. B. ....,

Or C. D., Agent for A. B. ....

Sworn and subscribed before me, this ..... day of ....., A. D.  
 .....,  
 Clerk.

No. 83. (Vermont.) TO A MORTGAGE.

We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due and owing from the mortgagor to the mortgagee. Which affidavit, with the certificate of the oath signed by the authority administering the same shall be appended to such mortgage and recorded therewith.

When a corporation is a party it may be made and subscribed by a director, trustee, cashier, or treasurer, or by a person authorized by the corporation.

When a partnership is a party one of its members may subscribe to it.

OFFICIAL OATHS.

No. 84. OATH OF GOVERNMENT OFFICERS.

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

.....

No. 85. OATH OF GOVERNMENT OFFICERS FORMERLY PARTICIPANTS IN THE REBELLION.

I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

.....

## No. 86. NOTARY'S OATH.

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of . . . . ., so long as I continue a citizen thereof, and that I will faithfully discharge, according to law, the duties of the office of . . . . . to the best of my ability, so help me God.

No. 87. OATH REQUIRED TO BE TAKEN BY ALL PERSONS BEFORE ENTERING UPON THE DUTIES OF THEIR OFFICE IN KENTUCKY.

## FORM.

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this commonwealth, and be faithful and true to the commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of . . . . . according to law, and I do further swear (or affirm) that since the adoption of the present constitution, I being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

## No. 88. OATH OF OFFICE IN NEVADA.

I, . . . . ., do solemnly swear (or affirm) that I will support, protect, and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, and I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office; and further, that I will well and faithfully perform all the duties of the office of . . . . ., on which I am about to enter (if an oath) "so help me God," (if an affirmation), under the pains and penalties of perjury.

## No. 89. IN NORTH CAROLINA.

Party to lay his hand on the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and methods of salvation pointed out in that blessed volume;

and in further token, that, if he should swerve from the truth, he may be justly deprived of all blessings of the gospel and made liable to that vengeance which he has imprecated on his own head; and he shall kiss the holy gospel, as a seal of confirmation to the said engagements.

If conscientiously opposed to taking the book, he may stand with his right hand uplifted and say: "I, . . . . ., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment when the searcher of all hearts shall be known," etc.

#### No. 90. OATH REQUIRED OF AN OFFICER OF VIRGINIA.

I, . . . . ., do declare myself a citizen of the commonwealth of Virginia, and do solemnly swear that I will support and maintain the constitution and laws of the United States, and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law; and that I will faithfully perform the duty of . . . . . to the best of my ability. So help me God.

#### No. 91. OATH OF COMMISSIONER OF DEEDS.

I, . . . . ., swear (or affirm) that I will faithfully perform the duties of commissioner to the best of my ability. So help me God.

#### No. 92. OATH ALLOWED TO OFFICE HOLDERS.

I swear (or affirm) that I have not since the removal of my disabilities by an act of the general assembly, approved the . . . . . day of . . . . ., eighteen . . . . ., fought in a duel, the issue of which was or might have been the death of either party; nor have I been knowingly the bearer of any challenge or acceptance to fight a duel actually fought; nor have I been otherwise engaged or concerned, directly or indirectly, in a duel actually fought since said time; nor will I during my continuance in office be so engaged, directly or indirectly. So help me God.

#### No. 93. OATHS GENERALLY.

Should be administered while standing with the head uncovered and the right hand raised.

1. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance. So help you God.

2. You do solemnly, sincerely and truly declare and affirm that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance.

#### No. 94. TO A WITNESS.

3. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the identity of the parties (or, the subscribing witness) to this conveyance. So help you God.

4. You do solemnly swear by the ever-living God, that the contents of this affidavit by you subscribed to are true.

5. You do solemnly swear, that the evidence which shall be given by you, touching the matters in controversy between C. D. and G. B., shall be the truth, the whole truth, and nothing but the truth. So help you God.

6. You do solemnly swear by the ever-living God, that the statement herein set forth and subscribed to by you is the truth.

#### No. 95. AFFIRMATION.

7. You do solemnly, sincerely and truly declare and affirm.

#### No. 96. (Indiana.) OATH.

Swear to tell the truth, the whole truth, and nothing but the truth.

#### No. 97. OATH.

Shall be most consistent with and binding upon the conscience of the party taking it.

#### No. 98. TO WITNESS IN MINNESOTA.

You do solemnly swear that the evidence you shall give relative to the cause now under consideration shall be the truth and nothing but the truth. So help you God.

#### No. 99. AFFIDAVIT.

You do solemnly swear, that the contents of this affidavit, by you subscribed to, are true, as therein stated. So help you God.

#### No. 100. FORM FOR AN INFIDEL.

You do honestly and sincerely promise and declare that the testimony you shall give relative to the cause now under consideration shall be the truth, the whole truth, and nothing but the truth, and this under the pains and penalties of perjury.

#### No. 101. CANADA.

Canada, }  
Province of British Columbia. } to wit:

I, A. B., solemnly declare that (state facts), and I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act, 1893."

Declared before me, ....., at ....., this ..... day of .....,  
A. D. ....

#### No. 102. AFFIRMATION FORM.

I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare, etc.

## No. 103. BILL OF SALE.

Know all men by these presents, that ....., of the ....., in the County of ....., and State of ....., part.. of the first part, for and in consideration of the sum of ..... dollars, lawful money of the United States of America, to ..... in hand paid, at or before the ensembling and delivery of these presents, by ..... of the second part, the receipt whereof is hereby acknowledged, ha.. granted, bargained, sold, and delivered, and, by these presents, do.. grant, bargain, sell, and deliver, unto the said part.. of the second part, all the following goods, chattels, and property, to wit:.....

To have and to hold the said goods, chattels, and property unto the said part.. of the second part, ..... heirs, executors, administrators, and assigns, to and for ..... own proper use and behoof, forever.

And the said part.. of the first part do.. vouch ..... to be the true and lawful owner.. of the said goods, chattels, and property, and have in ..... full power, good right, and lawful authority, to dispose of the said goods, chattels, and property, in manner, as aforesaid: And ..... do, for ..... heirs, executors, and administrators, covenant and agree to and with the said part.. of the second part, to warrant and defend the said goods, chattels, and property to the said part.. of the second part, ..... executors, administrators, and assigns, against the lawful claims and demands of all and every person and persons whomsoever.

In witness whereof, ..... have hereunto set ..... hand.. and seal., the ..... day of ....., in the year one thousand eight hundred and .....

..... (Seal.)  
..... (Seal.)

Sealed and delivered in the presence of

.....

State of ....., }  
..... County. } ss.

I, ....., in and for said county, do hereby certify, that this instrument was duly acknowledged before me, by the above named ....., this ..... day of ....., A. D. 18..

.....

## No. 104. AGREEMENT.

This agreement made this ..... day of ....., between T. B. of ....., merchant, of the first part, by C. J., his attorney, and W. F. of ....., merchant, of the second part, by C. S., his attorney, witnesseth.

That the said party of the first part, in consideration of ..... dollars to him in hand paid, agrees to (state agreement).

(Signed and sealed by both attorneys.)

## No. 104A. AGREEMENT FOR SALE AND PURCHASE.

This agreement, made this ..... day of ....., between T. S., of ....., farmer, and G. S., of ....., merchant, witnesseth:

That the said T. S., in consideration of the agreement hereinafter

contained, to be performed by G. S., agrees to sell and deliver to the said G. S., at his warehouse in ..... (specify goods), on or before the ..... day of ....., 19.., and the said G. S., in consideration thereof, agrees to pay to the said T. S. the sum of ..... dollars per ..... for the said ..... immediately upon the completion of the delivery thereof.

In witness whereof we have this day and year as above written set our hands and seals. ....

#### No. 105. AGREEMENT FOR WARRANTEE DEED.

Articles of agreement, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., between ....., party of the first part, and ....., party of the second part; witnesseth, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on ..... part to be made and performed, the said party of the first part hereby covenants and agrees to convey and assure to the said party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the lot., piece., or parcel of ground, situated in the County of ....., and State of ....., known and described as ....., and the said party of the second part hereby covenants and agrees to pay to the said party of the first part the sum of ..... dollars in the manner following: ....., with interest at the rate of ..... per centum per annum, payable ..... annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land, subsequent to the year ....., And in case of the failure of the said party of the second part to make either of the payments, or any part thereof, or perform any of the covenants on ..... part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by ..... on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by ..... sustained, and ..... shall have the right to re-enter and take possession of the premises aforesaid.....

It is mutually agreed, by and between the parties hereto, that the time of payment shall be the essence of this contract and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Sealed and delivered in presence of .....

.....

## No. 105A. ASSIGNMENT OF AN ACCOUNT.

Know all men by these presents, that I, A. B., of . . . . ., in consideration of . . . . . dollars, lawful money of the United States [to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged(c)], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto Y. Z., of . . . . ., his executors, administrators, and assigns, to his and their own proper use and benefit [all my right, title, and interest in and to]\*, any and all sum or sums of money now due or to grow due upon the annexed account, or upon the sales [or, services, or, loans, or whatever transactions may be the basis of the account] therein mentioned. And I do hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound, and give acquittance for the same, or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof, I have hereunto set my hand and seal, this . . . . . day of . . . . ., 18. . . . .

In presence of  
(Signature of witness or witnesses.)

(Signature.) (Seal.)

## No. 105B. ASSIGNMENT OF LEASE.

(As in Form 105A to the \*, continuing thus:) a certain indenture of lease, bearing date the . . . . . day of . . . . ., in the year one thousand nine hundred and . . . . ., made by . . . . ., of . . . . ., to me the said . . . . ., of a certain dwelling-house and lot, situate in . . . . ., with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances;(h) to have and to hold the same unto the said . . . . ., his heirs, executors, administrators, and assigns, from the . . . . . day of . . . . . next, for and during all the rest, residue, and remainder of the term of . . . . . years mentioned in the said indenture of lease; subject, nevertheless, to the rents, covenants, conditions, and provisions therein also mentioned. And I do hereby covenant and agree to and with the said . . . . . that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and encumbrances whatsoever.

In witness, etc.

## No. 105C. ASSIGNMENT OF MORTGAGE.

Know all men by these presents, that whereas . . . . ., of . . . . ., on . . . . . day of . . . . ., by his deed of mortgage of that date, for the consideration of . . . . ., did grant, bargain, sell, and convey unto me, . . . . ., of . . . . ., my heirs and assigns, all and singular (here describe the mortgaged premises), to have and to hold the same to me

the said ....., my heirs and assigns, forever, upon condition (here recite the conditions of the mortgage). Now, therefore, I, the said ....., in consideration of the sum of ....., to me in hand paid before the ensembling hereof, do by these presents sell, assign, transfer, and set over unto ....., of ....., his heirs and assigns, forever, the said (premises), to have and to hold the same to him, the said ....., his heirs and assigns, forever, as fully and in as ample a manner as I, the said ....., my heirs or assigns, might hold and enjoy the same by virtue of the mortgage-deed aforesaid, and not otherwise.

And I do, for myself, my heirs, executors, and administrators, hereby authorize and empower the said ....., his heirs, executors, and administrators, to receive to his and their own use the sum or sums mentioned in the condition of said deed, whenever the same shall be tendered or paid to him or them, by the said ....., his heirs, executors, or administrators, agreeably thereto, and to discharge the said mortgage, or to take and pursue such other steps and means for recovery of the said sum or sums, with the interest, by sale of the said mortgaged premises, or otherwise, as by law are provided, as fully to all intents and purposes as I, the said ....., my heirs, executors, or administrators might or could do.

And I do, for myself, my heirs, executors, and administrators, covenant with the said ....., his heirs and assigns, that I have good right to assign the said premises as aforesaid; and that he, the said ....., shall, and may have, hold, occupy, possess, and enjoy the same (subject, however, to the right of redemption, as by law in such cases is provided), against the lawful claim of all persons.

In witness, etc.

#### No. 106. BOND FOR DEED.

Know all men by these presents, that ....., of the County of ....., and State of ....., ..... held and firmly bound unto ....., of the County of ....., and State of ....., in the penal sum of ..... dollars, to be paid unto the said ..... heirs, executors, administrators or assigns, to which payment, well and truly to be made ..... bind ..... heirs, executors, administrators, and every of them, firmly by these presents.

Sealed with ..... seal., and dated the ..... day of ....., A. D. 189..

The condition of the above obligation is such, that, whereas, the above bounden ..... ha.. this day sold to the said ....., heirs and assigns, for the sum of ..... dollars, all the following described lot., piece., or parcel.. of land, to wit:..... which sum of ..... dollars is to be paid in the manner following: ....., with interest at the rate of ..... per cent. per annum payable ..... annually on the whole sum remaining from time to time unpaid.

Upon the payment of the said sums being made at the time and in the manner aforesaid, and of all taxes, assessments, or impositions that may be legally levied or imposed upon said land subsequent to

....., A. D. 189., the said ....., ..... heirs, executors, and assigns, covenant.. and agree.. to and with the said ....., ..... heirs, executors, administrators and assigns to execute a good and sufficient deed of conveyance, in fee simple, free from all incumbrance, with full covenants of warranty for the above described premises.

Now, if the said ..... shall well and truly keep, observe, and perform ..... covenants and agreements herein contained on ..... part, to be kept and performed, then this obligation to be void; otherwise to remain in full force and virtue. It is expressly understood and agreed by and between the parties hereto, that time is of the essence of this contract, and, that in the event of the non-payment of said sum of money, or any part thereof, or the interest thereon, at the time or times herein named for its payment, that then the said ..... absolutely discharged at law and in equity from any and all liability to make and execute such deed.

..... (Seal.)

..... (Seal.)

Sealed and delivered in the presence of

.....  
.....

#### No. 106A. BOND FOR MONEY.

Know all men by these presents, that I, ....., of the town of ....., in the county of ....., and State of ....., merchant, am held and firmly bound unto ....., of said town, farmer, in the sum of ..... dollars (inserting the penal sum, which is commonly double the amount of the principal sum intended to be secured, in order to cover interests, costs, expenses, and other contingencies), good and lawful money of the United States, to be paid to said ....., his executors, administrators, or assigns, for which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated the ..... day of ....., 190...

The condition of this obligation is such, that if the above-bounden ....., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named ....., his executors, administrators, or assigns,\* the just and full sum of ..... dollars (inserting the principal intended to be secured), with interest at the rate of ..... per cent. per annum (or, with legal interest), for the same, on (or before), (b) the ..... day ....., which will be in the year one thousand nine hundred and ....., without fraud or other delay,\* then this obligation is to be void, otherwise to remain in full force.

..... (Seal.)

#### No. 107. CERTIFICATE.

The undersigned T. S., fence viewer of the town of ....., hereby certifies, after due inquiry, that G. B. is entitled to receive from the owner of the ..... which came upon his enclosed lands in said town

on the ..... day of ....., 19.., the sum of ..... dollars as his reasonable charges for keeping the same from the ..... day of ....., 19.., to the ..... day of ....., and that my fees in this matter amount to ..... dollars.

.....

#### No. 108. CONTRACT.

This agreement made the ..... day of ....., 1903, by and between T. C., of the ..... of ....., in the County of ..... and the State of ....., of the first part, and by W. C., of ....., of the second part, witnesseth: That the said party of the second part covenants and agrees to and with the party of the first part to (insert agreement). And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of ..... dollars in the following installments: ..... dollars on the ..... day of ..... and ..... dollars on the ..... day of ....., with ..... per cent. interest due and payable at the time.

And for the true and faithful performance of all and every of the covenants and agreements above mentioned the parties to these presents bind themselves, each unto the other, in the penal sum of ..... dollars as liquidated damages, to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

.....

Signed, sealed and delivered in the presence of

.....

#### No. 108A. CONTRACT WITH EMPLOYEE.

This agreement, made this ..... day of ....., 190...., between ....., of ....., of the first part, and ....., of ....., of the second part, witnesseth: That the said ..... agrees faithfully and diligently to serve the said ....., as clerk, in the store of the said ..... (or otherwise), at ....., for the period of ..... from and after the ..... day of ..... next, for the sum of ..... dollars per ..... In consideration of which service so to be performed, the said ..... agrees to pay the said ..... the sum of ..... per month (payable as follows: ..... on the ..... day of ....., and ..... on the ..... day of each month following, during said term, and at the expiration thereof, the balance of such sum as has not then been already paid).

And it is understood and agreed that the death of either of them occurring prior to the expiration of said term of ....., shall terminate this agreement.

In witness (etc., as above).

#### No. 109. CONTRACT FOR SALE OF REAL ESTATE.

Chicago, ....., 189..

Received of ....., ..... dollars, as part payment towards the

purchase of the following described real estate: .....  
 which is hereby bargained and sold to the said ..... for the sum of  
 ..... dollars, ..... dollars more to be paid on the delivery of a good  
 and sufficient warranty deed of conveyance for the same within .....  
 days from this date, or as much sooner thereafter as the deed is ready  
 for delivery, after the title has been examined and found good, and  
 the balance to be paid as follows: .....  
 To be secured by trust deed or mortgage on the property above de-  
 scribed. Should the title to the property not prove good, then this  
 \$. ..... to be refunded. But should the said ..... fail to perform this  
 contract on his part promptly at the time and in the manner above  
 specified (time being of the essence of this contract), then the above  
 ..... dollars shall be forfeited by ..... as liquidated damages, and  
 the above contract shall be and become null and void.

..... (Seal.)

..... (Seal.)

No. 110. WARRANTY DEED—BY CORPORATION.—LONG FORM.

This indenture, made this ..... day of ....., in the year of our  
 Lord one thousand eight hundred and ....., between ....., a cor-  
 poration created and existing under and by virtue of the laws of the  
 State of ..... and doing business in the State of ....., party of the  
 first part, and ....., a corporation created and existing under and by  
 virtue of the laws of the State of ....., having its principal office in  
 the ..... of ..... and State of ....., party of the second part.

Witnesseth, that the said party of the first part, for and in con-  
 sideration of the sum of ..... dollars in hand paid by the said party  
 of the second part, the receipt whereof is hereby acknowledged, and  
 the said party of the second part forever released and discharged  
 therefrom has granted, bargained, sold, remised, released, conveyed,  
 aliened and confirmed, and by these presents does grant, bargain, sell,  
 remise, release, convey, alien and confirm, unto the said party of the  
 second part, and to its successors and assigns forever, all the following  
 described lot., piece., or parcel.. of land, situated in the ..... of  
 ....., County of ....., and State of ....., and known and described  
 as follows, to wit: .....

Together with all and singular the hereditaments and appurten-  
 ances thereunto belonging, or in anywise appertaining, and the re-  
 version and reversions, remainder and remainders, rents, issues and  
 profits thereof; and all the estate, right, title, interest, claim or demand  
 whatsoever, of the said party of the first part, either in law or  
 equity, of, in and to the above bargained premises, with the heredita-  
 ments and appurtenances: To have and to hold the said premises  
 above bargained and described, with the appurtenances, unto the said  
 party of the second part, its successors and assigns, forever.

And the said ....., party of the first part, for itself and its suc-  
 cessors, does covenant, grant, bargain and agree, to and with the said  
 party of the second part, its successors and assigns, that at the time  
 of the enscaling and delivery of these presents, it is well seized of the

premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances, of what kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.....

This deed is executed pursuant to authority given by the board of ..... of said company.

In testimony whereof, the said ..... company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... president, and attested by its ..... secretary, the day and year first above written.

By ..... , President.

Attest: ..... , Secretary.

Signed, sealed and delivered in presence of

.....  
.....

State of ..... } ss.  
County of ..... }

I, ....., in and for said county, in the State aforesaid, do hereby certify that ....., personally known to me to be the ..... president of the ..... company, and ..... personally known to me to be the ..... secretary of said company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such ..... president and ..... secretary, they signed and delivered the said instrument of writing as ..... president and ..... secretary of said company, and caused the corporate seal of said company to be affixed thereto, pursuant to authority given by the board of ..... of said company as their free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and ..... seal this ..... day of ....., A. D. 18..

.....  
.....

#### No. 111. QUIT-CLAIM DEED.—LONG FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., between ....., of the ....., in the County of ....., and State of ....., party of the first part, and ....., of the ....., in the County of ....., and State of ....., party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of ..... dollars, in hand paid by the said

party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, ha.. remised, released, sold, conveyed, and quit-claimed, and by these presents do.. remise, release, sell, convey, and quit-claim, unto the said party of the second part, ..... heirs, and assigns, forever, all the right, title, interest, claim, and demand, which said party of the first part ha.. in and to the following described lot., piece., or parcel.. of land, situated in the County of ....., and State of ....., and known and described as follows, to wit:.....

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, ..... heirs, and assigns, forever.

And the said party of the first part hereby expressly waive.. and release.. any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part ..... hereunto set ..... hand.. and seal.. the day and year first above written.

..... (Seal.)

..... (Seal.)

A. D. 189..

Signed, sealed, and delivered, in the presence of

.....  
.....

County of ..... } ss.  
State of ..... }

I, ....., in and for the the said county, in the State aforesaid, do hereby certify, that ....., personally known to me to be the same person.. whose name.. ..... subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that ..he.. signed, sealed, and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and ..... seal, this ..... day of ....., A. D. 189..

#### No. 112. WARRANTY DEED.—JOINT TENANCY FOR ILLINOIS.

This Indenture, made this ..... day of ....., 190..., between ..... of the ..... in the County of ..... and State of ..... part.... of the first part, and ..... of the ..... in the County of ..... and State of ..... parties of the second part:

Witnesseth, that the part.... of the first part, for and in consideration of the sum of ..... Dollars, in hand paid, convey .... and warrant .... to the said parties of the second part, not as tenants in

common, but as joint tenants, the folowing described Real Estate, to wit:  
 .....situated in the  
 ..... County of Cook, in the State of Illinois, hereby releasing  
 and waiving all rights under and by virtue of the Homestead Exemption  
 Laws of the State of Illinois.

To have and to hold the above granted premises unto the said parties  
 of the second part forever, not in tenancy in common, but in joint  
 tenancy.

In witness whereof, the said part.... of the first part ha.... here-  
 unto set ..... hand.... and seal.... the day and year first above  
 written.

.....(Seal.)

.....(Seal.)

### No. 113. MORTGAGEE'S DEED.

This indenture, made this ..... day of ....., in the year of our  
 Lord, one thousand eight hundred and ninety ....., between .....  
 of the ....., in the County of ....., and State of ....., party of the  
 first part, and ....., of the ....., in the County of ....., and State  
 of ....., party of the second part:

Witnesseth that, whereas, ..... of the ..... in the County of  
 ....., and State of ....., by a certain indenture of mortgage, dated  
 the ..... day of ....., A. D. 18.., did bargain, sell, and convey unto  
 ....., ..... heirs and assigns forever, all the premises hereinafter  
 described, to secure the payment of the sum of ..... dollars and in-  
 terest, according to the conditions of ....., certain ....., bearing date  
 on the ..... A. D. 18.., .....  
 which said mortgage was afterwards on the ..... day of ....., A. D.  
 18.., at ..... o'clock in the ..... noon, duly recorded in the re-  
 corder's office of Cook County, in the State of Illinois, in Book .....  
 of mortgages, on pages .....

And whereas, the said mortgage contained a power of sale, among  
 other things, authorizing and empowering the said party of the second  
 part in said mortgage, ..... heirs, executors, administrators, attor-  
 neys or assigns, if default should be made in the payment of the said  
 ..... in said mortgage mentioned, or any part thereof, or the interest  
 thereon, or any part thereof, according to the tenor and effect of said  
 ..... or in case of waste, or non-payment of taxes or assessments, or  
 neglect to procure or renew insurance, or in case of the breach of any of  
 the covenants or agreements in said mortgage contained, after publish-  
 ing a notice in the Chicago Legal News or in any newspaper published  
 in the City of Chicago, in said Cook County, for ..... successive weeks  
 before the day of such sale, to sell the said mortgaged premises or  
 any part thereof at public auction to the highest bidder for cash, and  
 to make, execute and deliver to the purchaser or purchasers thereof  
 good and sufficient deed or deeds of conveyance in the law for the same  
 .....

And whereas, also, default having been made in the payment of  
 ....., and whereas, in pursuance of said power of sale in said mortgage

contained and above recited, and of the statute in such case made and provided, ....., the undersigned, ....., party of the first part, on the ..... day of ....., A. D. 189., caused due notice to be published in the Chicago Legal News, a newspaper published in the said City of Chicago, that said premises hereinafter described would, on the ..... day of ....., A. D. 189., at the hour of ..... o'clock in the ..... noon of said day, be sold at public auction, at the ....., in said County of Cook, to the highest bidder for cash, by virtue of the power and authority in ..... vested by said mortgage; which said notice was duly published weekly for ..... successive weeks in the said Chicago Legal News, and that the date of the first paper containing the same was the ..... day of ....., A. D. 189., and of the last the ..... day of ....., A. D. 189..

And whereas, also, the said premises having been by the said party of the first part, on the ..... day of ....., A. D. 189., at ..... o'clock in the ..... noon of said day, in the manner prescribed in and by said mortgage, and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tract ..... hereinafter named, the sum of ..... dollars, ..... duly declared the purchaser thereof.  
.....

Now, therefore, this indenture witnesseth, that the said party of the first part, by virtue of the authority in ..... vested by said mortgage as aforesaid, and of the statute in such case made and provided, for and in consideration of the sum so bid as aforesaid, to ..... in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, ha.. sold, conveyed, aliened, remised, released, and confirmed, and by these presents do.. sell, convey, alien, remise, release, and confirm unto the said party of the second part, and to ..... heirs and assigns forever, all the following described lot., piece., or parcel.. of land, situate in the County of Cook, and State of Illinois, known and described as follows, to wit: ..... Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by the said mortgage; and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said ....., as well as of the said party of the first part, of, in and to the above described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said mortgage and of the statute in such case made and provided, to have and to hold the said above granted premises, with their appurtenances, and every part thereof, unto the said party of the second part, ..... heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set ..... hand.. and seal.., the day and year first above written.

..... (Seal.)

..... (Seal.)

## No. 114. RELEASE DEED.

Know all men by these presents, that ....., of the County of ....., and State of ....., for and in consideration of one dollar, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby remise, convey, release and quit-claim, unto ....., of the County of ....., and State of ....., all the right, title, interest, claim, or demand whatsoever ..... may have acquired in, through, or by a certain trust deed, bearing date the ..... day of ....., A. D. 189., and recorded in the recorder's office of ..... County, in the State of ....., in Book ..... of ....., page ....., to the premises therein described, as follows, to wit: ..... Together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness ..... hand.. and seal., this ..... day of ....., A. D. 189..  
 ..... (Seal.)  
 ..... (Seal.)

State of ....., }  
 ..... County. } ss.

I, ....., in and for the said county, in the State aforesaid, do hereby certify, that ....., personally known to me to be the same person.. whose name.. ..... subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged, that ..he.. signed, sealed, and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and ..... seal, this ..... day of ....., A. D. 189..  
 .....  
 .....

## No. 115. (Indiana.) WARRANTY DEED.

A. B. conveys and warrants to C. D. (describe premises) for the sum of ..... this ..... day of .....

Signed.....(Seal.)

(Acknowledgment.)

## No. 116. (Indiana.) QUIT-CLAIM DEED.

A. B. quit-claims to C. D. (describe the premises) for the sum of ....., same to be signed, sealed and acknowledged.

## No. 117. (Indian Territory.) WARRANTY DEED.

Know all men by these presents, that I, A. B., of ....., So. District of ....., in consideration of ..... dollars, to me paid by C. D., of ....., Southern District of the Indian Territory, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said C. D. and his heirs a certain tract or parcel of land situate in ..... aforesaid, bounded and described as follows: ..... with all the privileges and appurtenances thereunto belonging.

To have and to hold the above granted premises to the said C. D. and his heirs, in fee simple, forever; and I, the said A. B., for myself and my heirs, executors and administrators, do covenant with the said C. D. and his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises, and that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D. as aforesaid, and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said C. D. and his heirs and assigns forever against the lawful claims and demands of all persons and for the consideration aforesaid, and for divers other good and valuable considerations, I, H. B., wife of the said A. B., do hereby release and quit-claim unto the said C. D., his heirs and assigns, all my right, claim or possibility of dower in or out of the afore-described premises. In witness whereof, we, the said A. B. and H. B., have hereunto set our hands this ..... day of .....

No. 118. (Iowa.) QUIT-CLAIM DEED.

For the consideration of ..... dollars, I hereby quit-claim to A. B. all my interest in the following tract of real estate (describe it).

No. 119. (Iowa.) WARRANTY DEED.

For the consideration of ..... dollars, I hereby convey to A. B. the following tract of real estate (describe it), and I warrant the title against all persons whomsoever (or other words of warranty as may be desired).

No. 119A. (Iowa.) DEED WITHOUT WARRANTY.

For the consideration of ..... dollars, I hereby convey to A. B. the following tract of real estate (describe it).

No. 120. (Kansas.) WARRANTY DEED.

A. B. conveys and warrants to C. D. (here describe premises) for the sum of .....

Same to be dated, signed and acknowledged by the grantor.

No. 121. QUIT CLAIM DEED.

A. B. quit claims (describe the premises) for the sum of .....

Same to be dated, signed and acknowledged by the grantor.

The word "heirs" and other terms of inheritance are not necessary.

No. 122. (Maryland.) DEED.

This deed, made this ..... day of ..... in the year ....., by me (name of grantor), witnesseth, that in consideration of (consideration), I, the said ....., do grant unto (name of grantee), all that (describe property).

Witness my hand and seal.

Test., .....

## No. 123. MARRIED WOMAN A PARTY.

This deed, made this ..... day of ....., in the year ....., by us, ..... and ....., his wife, witnesseth, that in consideration of ....., we, the said ..... and his wife, do grant unto .....

Witness our hands and seals.

Test., .....

(Seal.)

## No. 124. (Minnesota.) QUIT-CLAIM DEED.

The grantor (insert names and residence) for the consideration of (insert consideration) conveys and quit-claims to (insert names of grantees) all interest in the following described real estate (insert description), situate in the County of ....., in the State of Minnesota.

Dated this ..... day of ....., A. D. ....

Acknowledgment of notary follows.

## No. 125. (Minnesota.) WARRANTY DEED.

The grantor (insert names and residence), for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (name of grantee) the following described real estate (insert description), situate in the County of ....., in the State of Minnesota.

Dated this ..... day of ....., A. D. ....

State of Minnesota, }  
County of ..... } ss.

On this ..... day of ..... before me personally appeared A. B., to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as ..... free act and deed.

.....

Notary Public.

Every deed in substance in the above form conveys and warrants in fee simple.

## No. 125A. (Mississippi.) DEED.

State of ..... }  
County of ..... } ss.

In consideration of ....., I convey and warrant to ..... the land described .....

Witness my signature, the ..... day of ....., A. D. ....

If only a special warranty is intended, add the word "specialty" to the word warrant in the conveyance.

## No. 126. (North Dakota.) GRANT OF LAND.

This grant, made the ..... day of ..... in the year ....., between A. B., of ....., of the first part, and C. D., of ....., of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of ..... dollars, now

received, all the real property situated in ..... and bounded (or described) as follows: .....

Witness the hand of the party of the first part.

.....  
If not acknowledged must be attested by one witness.

#### No. 127. (Oklahoma.) WARRANTY DEED.

Know all men by these presents:

That ....., part.. of the first part, in consideration of the sum of ..... dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto ..... the following described real property, and premises, situate in ..... County, Territory of Oklahoma, to wit: ..... together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same to have and to hold said described premises unto the said party of the second part, ....., heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this ..... day of .....

A Quit Claim is substantially the same, only inserting "Quit Claim" before the words grant, bargain, etc., and omitting "and warrant the title to same."

#### No. 128. (South Carolina.) CONVEYANCE.

The State of South Carolina.

Know all men by these presents, that I, A. B., of ....., in the State aforesaid, have granted, bargained, sold and released, and by these presents to grant, bargain, sell and release, unto the said C. D. all that (..... describe), together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining, to have and to hold all and singular the premises before mentioned, unto the said C. D., his heirs and assigns, forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against any person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal, this ..... day of ..... in the year of our Lord ....., and in the year of the independence of the United States of America .....

..... L. S.

The above executed in the presence of two or more credible witnesses, and certified to by the County Auditor, will entitle it to record.

#### No. 129. (Tennessee.) DEED OF WARRANTY.

I hereby convey to A. B. the following tract of land (..... describe it) and I warrant the title against all persons whatsoever.

## No. 130. SPECIAL WARRANTY DEED.

Add "I covenant that I am seized and possessed of the said land, and have a right to convey it, and I warrant the title against all persons claiming under me.

## No. 131. QUIT CLAIM.

I hereby convey to A. B. all my interest in the following land.

## No. 132. (Utah.) QUIT-CLAIM DEED.

A. B., grantor (here insert names and residence), hereby quit claims to C. D., grantee (here insert names and residence), for the sum of ..... dollars, the following described tract of land, in ..... County, Utah (here describe the premises).

Witness the hand of said grantor this ..... day of ....., A. D. ....

## No. 133. (Utah.) WARRANTY DEED.

A. B., grantor, hereby conveys and warrants to C. D., grantee, for the sum of ..... dollars, the following described tract of land in ..... County, Utah (here describe the premises).

Witness the hand of said grantor this ..... day of ....., A. D. ....

## No. 134. (West Virginia.) DEED.

This deed, made the ..... day of ....., in the year ....., between (parties names), witnesseth: That in consideration of ..... the said ..... doth grant unto the said ..... all (describe premises and covenants). Witness the following signature and seal.

## No. 136. (Wisconsin.) WARRANTY DEED.

A. B., grantor, of ..... County, Wisconsin, hereby conveys and warrants to C. D., grantee, of ..... County, Wisconsin, for the sum of ..... dollars, the following tract of land in ..... County (here describe premises).

Witness the hand and seal of said grantor this ..... day of ....., 19..

In the presence of

..... (Seal.)  
 ..... (Seal.)

## No. 137. (Wisconsin.) QUIT-CLAIM DEED.

A. B., grantor, of ..... County, Wisconsin, hereby quit claims to C. D., grantee, of ..... County, Wisconsin, for the sum of ..... dollars, the following tract of land in ..... County (here describe the premises).

Witness the hand and seal of said grantor this ..... day of .....,  
19..

In the presence of

..... (Seal.)  
..... (Seal.)

The above, when acknowledged, conveys fee simple.

#### No. 138. TRUST DEED.

This Indenture witnesseth that the grantor, ....., of the ..... in the County of ..... and State of ....., for and in consideration of the sum of ..... dollars in hand paid, conveys and warrants to ..... of the ..... County of ..... and State of ..... the following described real estate, to wit:..... situated in the County of ....., in the State of ....., hereby releasing and waiving all rights under and by virtue of the Homestead Execution laws of the State of ....., and all right to retain possession of said premises after any default in payments or of a breach of any of the covenants or agreements herein contained in trust, nevertheless, for the purposes.

Whereas, the said ....., grantor herein, ..... justly indebted upon ..... promissory note bearing even date herewith, payable to the order of ..... Now, if default be made in the payment of the said promissory note or any part thereof, or the interest thereon, or any part thereof, at the time and in the above manner specified for the payment thereof, or in case of waste, or non-payment of taxes, or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum secured by the said promissory note shall thereupon, at the option of the legal holder or holders thereof, become immediately due and payable, and, on the application of the legal holder of said promissory note, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, issues and profits thereof; and in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof against the said party of the first part, ..... heirs, executors, administrators or assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the costs of any such suit, all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and ..... dollars attorney's and solicitor's fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at seven per cent. per annum, then to pay the principal of said note, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest due on said note up to the time of such sale, rendering the

overplus, if any, unto the said party of the first part, ..... legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of such sale or sales, and it shall not be the duty to the purchaser to see to the application of the purchase money.

When the said note and all expenses accruing under this Trust Deed shall be fully paid, the said grantee or his successor, or legal representatives, shall reconvey all of said premises remaining unsold to the said grantor or ..... heirs or assigns, upon receiving his reasonable charges therefor. In case of the death, resignation, removal from said ..... County, or other inability, to act of said grantee, then ..... of said ..... is hereby appointed and made successor in trust herein with like power and authority, as is hereby vested in said grantee. It is agreed that said grantor shall pay all costs and attorney's fees incurred or paid by said grantee or the holder or holders of said note in any suit in which either of them may be plaintiff or defendant, by reason of being a party to this Trust Deed, or a holder of said note, and that the same shall be a lien in said premises, and may be decreed in any decree ordering the sale of said premises and taken out of the proceeds of any sale thereof.

Witness the hand and seal of the said grantor this ..... day of ....., A. D. 19..

(Acknowledgment follows.)

#### No. 138A. DEPOSITION OF RESIDENT WITNESS.

The deposition of ..... of the County of ..... and State of ..... witness.... of lawful age, produced, sworn and examined on ..... corporal oath, on the ..... day of ..... A. D. 190..., at ..... in the ..... in the County of ..... and State of ..... by me ..... a ..... within and for said ..... in pursuance of the ..... hereto annexed, for the examination of the said witness.... to be read in evidence on behalf of the ..... on the trial of a certain suit now pending and undetermined in the ..... Court of the ..... wherein ..... plaintiff.. and ..... defendant..

The said ..... being first by me duly sworn, according to law, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff.. as of the defendant.. in relation to the matters in controversy between the said parties, so far as ..he should be interrogated thereto, on oath, testified as follows:

State of Illinois,  
 .....County,                    } ss.  
 .....

I, ..... a ..... within and for the said ..... do hereby certify that in pursuance of the annexed ..... I caused the said .....the witness.. named in the said ..... and whose name .... subscribed to the foregoing deposition.., to appear before me on the

.....day of ..... 190...., as in said ..... specified; that previous to the commencement of the examination of the said.....  
 ..he ..w.... sworn by me according to law, to testify the truth, the whole truth, and nothing but the truth, relative to the matters in controversy in the said cause now pending and undetermined in the ..... Court of ..... between ..... plaintiff, and ..... defendant, so far as ..he.. should be interrogated concerning the same; that the said deposition.. w.... taken at ..... in the said ..... on the ..... day of ..... 190...., between the hours of .... o'clock a. m. and .... o'clock p. m. of said day, and was reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the event of the same; that after said deposition.. w.... taken by me as aforesaid, the interrogatories and the answers thereto of each witness, as written down, were read over to ..... and that thereupon the same were ..... signed and sworn to by the ..... before me, at the place and on the day and year aforesaid, and that ..... the plaintiff ..... present ..... and that the defendant .....

In witness whereof, I have hereunto affixed my hand and ..... seal, this ..... day of ....., 190....

.....

#### No. 139. DEPOSITION TAKEN BEFORE NOTARY BY AGREEMENT OR NOTICE.

In the ..... Court of ..... County.  
 Of ..... Term, A. D. 189..

..... }  
 vs. }  
 ..... }

State of ....., } ss.  
 ..... County. }

Be it remembered, that on this ..... day of ....., A. D. 189.., personally appeared before me, ....., a notary public in and for the ....., and State of Illinois, ..... to testify on the part of ....., in the above entitled cause.

And the said ....., having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did depose and say as follows, to wit:

.....

State of ....., } ss.  
 ..... County, }

I, ....., a notary public in and for the ....., of ....., and State of Illinois, do hereby certify that on the ..... day of ....., A. D. 189.., by agreement of ..... and ....., personally appeared before me, at the office of ....., Illinois, ..... witness to testify on the behalf of the ..... in a certain cause now pending in the ....., wherein ..... and .....

And I do hereby further certify, that he aforesaid witness.. w.....

first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as ..he.. should be interrogated, and that the testimony of said witness.. w.... reduced by me to writing, and first carefully read to said witness.., and the same subscribed to by said witness.. in my presence.

.....

In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, this ..... day of ....., A. D. 189..

.....

Notary Public.

Notary's Fee, \$.....

#### No. 140. NOTICE TO TAKE DEPOSITION—COURT IN BLANK.

State of Illinois, }  
..... County. } ss.

In the ..... Court  
of ..... County, State of Illinois.  
..... Term, 189..

..... }  
vs. }  
..... }

Mr. ....

The above named.....

Sir,

Please take notice, that, on the ..... day of ....., A. D. 189.., at ..... o'clock, .... M., and to continue from day to day, if necessary, at the ..... of ....., in ....., in the County of ....., and State of Illinois, before ....., a ....., or some other officer authorized by law to take depositions in such cases, ..... shall proceed to cause to be taken the deposition.. of ..... of said ..... County, to be read in evidence on the trial of the above entitled cause, on the part of said ....., when and where you may attend, and cross-examine the said witness.., if you shall see fit so to do.

Dated this ..... day of ....., A. D. 189..

.....

Attorney for .....

#### No. 141. (Wisconsin.) DEPOSITION CERTIFICATE.

State of Wisconsin, }  
..... County. } ss.

I, ..... (name and office), in and for said county, do hereby certify that the above deposition was taken before me, at my office, in the town of ....., in said county, on the ..... day of ....., 18.., at ..... o'clock ..... noon; that it was taken at the request of the plaintiff (or defendant), etc., upon verbal (or written) interrogatories; that it was reduced to writing by myself (or by deponent, or by ....., a disinterested person, in my presence, and under my direction); that it was taken to be used in the action of ....., now pending in .....

court (or as the case may be), and that the reason for taking it was .....; that ..... attended at the taking of such deposition (or that a notice of which the annexed is a copy, was served upon ....., on the ..... day of ....., 18.., or that the deposition was taken in pursuance of the annexed stipulation); that said deponent before examination was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent and then subscribed by him.

.....

#### No. 142. JURAT.

Sworn and subscribed to before me, on the ..... day of ....., 18..

Signature of Officer,

Title of Office.

#### No. 143. LEASE—SHORT FORM.

This agreement made the ..... day of ....., in the year one thousand eight hundred and ninety ....., between ....., of the first part, and ....., of the second part.

Witnesseth, that he said part.. of the first part ha.. agreed to let, and hereby do.. let to the said part.. of the second part, and the said part.. of the second part ha.. agreed to take, and hereby do.. take from the said part.. of the first part, ..... for the term of ....., to commence on the ..... day of ....., A. D. 189.., and to end on the ..... day of ....., A. D. 189..

And the said part.. of the second part hereby covenant.. and agree.. to pay unto the said part.. of the first part, the ..... rent or sum of ..... payable .....

And to quit and surrender the premises, at the expiration of the said term, in as good state and condition as they were in at the commencement of the term, reasonable use and wear thereof and damages by the elements excepted.

And the said part.. of the second part further covenant.. that ..... will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said part.. of the first part, under the penalty of forfeiture and damages; and that ..... will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra-hazardous on account of fire or otherwise, without the like consent, under the like penalty.

And the said part.. of the second part further covenant.. that ..... will permit the said part.. of the first part, or ..... agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notice of "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And also, that if the said premises, or any part thereof, shall become vacant during the said term, the said part.. of the first part, or

..... representative, may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and re-let the said premises as the agent of the said part.. of the second part, and receive the rent thereof, applying the same first to the payment of such expenses as ..... may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said part.. of the second part, who shall remain liable for any deficiency.

And the said part.. of the second part hereby further covenant.. that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said part.. of the first part shall wholly cease and determine; and the said part.. of the first part shall and may re-enter the said premises and remove all persons therefrom; and the said part.. of the second part hereby expressly waive.. the service of any notice in writing of intention to re-enter, notice to terminate the tenancy, notice to quit or demand for possession.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)  
 ..... (Seal.)  
 ..... (Seal.)

Sealed and delivered in the presence of

.....

#### No. 144. LEASE.—CHICAGO FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ....., between ....., party of the first part, and ....., party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, ..... executors, administrators and assigns, has demised and leased to the said party of the second part, all those premises situate, lying and being in the City of Chicago, in the County of Cook, in the State of Illinois, known and described as follows, to wit: .....  
 To have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, ..... executors, administrators and assigns, from the ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., for and during and until ....., eighteen hundred and .....

And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with said party of the first part, ..... heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said premises, the sum of .....

Said party of the first part shall have the right to put up notices to rent, and show the premises at reasonable hours, for thirty days prior to the expiration of this lease.

And the said party of the second part further covenants with the said party of the first part, that said party of the second part has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned, or sooner determination thereof by forfeiture, . .he.. will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident or ordinary wear excepted; and also will keep the said premises in good repair during this lease, at ..... own expense.

It is further agreed by the said party of the first part, that neither .he.. nor ..... legal representatives, will underlet said premises or any part thereof, or assign this lease, without the written assent of the said party of the first part had and obtained thereto.

And the said party of the second part, for ..... executors, administrators and assigns, agree.. further to pay (in addition to the rents above specified), all water rents taxed, levied or charged on said premises, for and during the time for which this lease is granted, and save said premises and the said party of the first part harmless therefrom, and that .he.. will keep said premises in a clean and wholesome condition, in accordance with the ordinances of the city and directions of the health officers. And it is further agreed that all plumbing, water-pipes, gas-pipes, and sewerage, shall be at the risk of the said party of the second part.

And, provided the said party of the first part shall pay for any water rent, or for repairs of hydrants, supply or waste pipes, or sewers on said premises which may be ordered by the board of public works, or for the removal of any night-soil removed by the order or direction of the board of health or any of its officers, the amount so paid shall be considered as additional rent, and the said party of the first part may collect the same of the said party of the second part in the same manner as other rents under this lease.

It is expressly understood and agreed by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, ..... executors, administrators and assigns, it shall and may be lawful for the said party of the first part, ..... heirs, executors, administrators, agent, attorney or assigns, at ..... election, to declare said term ended, and into the said premises, or any part thereof, either with or without process of law, to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy as in ..... first and former estate, and to distrain for any rent that may be due thereon upon any property belonging to said

party of the second part, whether the same be exempt from execution and distress by law or not; and the said party of the second part in that case hereby agree.. to waive all legal rights which .he.. now ha.. or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way, meaning and intending hereby to give to the said party of the first part, ..... heirs, executors, administrators or assigns, a valid and first lien upon any and all goods and chattels and other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, ..... heirs, executor, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, ..... executors, administrators and assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably to said party of the first part, ..... heirs, executors, administrators or assigns, immediately upon the determination of the said term, as aforesaid; and if ..... shall remain in possession of the same ..... after ..... such default, or after the termination of this lease, in any of the ways above named, ..... shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated. And the said party of the second part hereby waives ..... right to any notice from said party of the first part of ..... election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent or the possession of the premises leased herein; but the simple fact of the non-payment of the rent reserved, shall constitute a forcible detainer as aforesaid.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs, attorneys' fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

#### No. 144A. (West Virginia.) LEASE.

This deed, made the ..... day of ....., in the year ....., between (names of parties), witnesseth: That the said ..... doth demise unto the said ....., his personal representatives and assigns, all (describe premises), from the ..... day of ....., for the term of ....., thence ensuing, the said ..... paying to the said ..... therefor, during the said term, the rent of (amount and mode of payment). Witness the following signature and seal .....

#### No. 144B. NOTICE TO TERMINATE LEASE.

I hereby give you notice, that in pursuance of the power for this purpose given to me by the indenture of lease, dated the ..... day

of ....., and made between you, of the one part, and me, of the other part, it is my intention to determine the lease thereby made, on the ..... day of ..... next, and I shall therefore quit and deliver up possession to you (or, require you to quit and deliver up possession to me) of the messuage (etc., here briefly describe the premises).

(Date.)

(Signature.)

(Address.)

## No. 145. MARINE PROTEST.

## THE UNITED STATES OF AMERICA.

State of ....., }  
County of ..... } ss.

To all People to whom these Presents shall Come or may Concern:

I, ....., a notary public, in and for the County of ....., in the State aforesaid, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in ....., send greeting: Know ye, that on the ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., before me, the said notary, appeared ....., master of the vessel called the ....., of ....., burthen ..... tons, and noted in due form of law with me, the said notary, his protest, for the use and purposes hereinafter mentioned; and now at this day, to wit: the day of the date hereof, before me, the said notary, at ..... aforesaid, again comes the said ....., master, and requires me to extend his protest, and together with the said master, also comes ....., mate and ....., ....., ....., ....., seamen, belonging to the aforesaid vessel, all of whom, being by me duly sworn, voluntarily, freely and solemnly do declare and depose as follows, that is to say: That on the ..... day of ....., 189., at ..... o'clock ....M., the said vessel left ....., in the State of ....., bound thence to the port of ....., in the State of ....., laden with .....; that the said vessel was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualed, appareled and appointed, and was in every respect fit for sea, and the voyage she was about to undertake:

And the said master further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said vessel or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and can not, nor ought to be attributed to any insufficiency of the said vessel, or default of him, this deponent, his officers or crew. He now requires of me, the said notary, to make this protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said master doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against winds, weather and seas, ....., and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said vessel, or her cargo, already has or hereafter shall appear to have suffered or sustained damage or

injury, for all losses, costs, charges, expenses, damages and injury which the said master, or the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into, by or on account of the premises, or for which the insurer or insurers of the said vessel, or her cargo, is or are respectively liable to pay or make contribution or average, according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said master, his officers or crew.

This done and protested, in ....., this ..... day of ....., 18..

....., Master.

....., Mate.

.....,

.....,

.....,

.....,

Seamen.

In witness whereof, as well the said appearers, as I, the said notary, have hereunto subscribed these presents, and I, the said notary, hereunto attached my notarial seal, the day and year last aforesaid.

.....,

Notary Public.

State of ....., } ss.  
..... County.

I, ....., a notary public in and for said county, in the State aforesaid, do hereby certify that the foregoing contains a true and correct copy of the original protest entered on record before me, by ....., master of the ....., said protest having been noted on the ..... day of ....., 18., and extended before me on the ..... day of ....., 18..

In witness whereof, I have hereunto set my hand and notarial seal, this ..... day of ....., 18..

.....,

Notary Public.

#### No. 146. MARINE NOTE OF PROTEST BY MASTER.

##### THE UNITED STATES OF AMERICA.

State of ....., County of ....., ss.

Be it known, that on this ..... day of ....., 18., before me, ....., a notary public for and in the County of ....., and State of ....., personally appeared ....., master of the ....., or vessel called the ....., of the burthen of ..... tons, or thereabouts, who declares that he sailed last in the vessel under his command, laden with a cargo of ....., on the ..... day of ....., 18., from the port of ....., and bound for the port of ....., in the State of ..... Thus the said master notes this, his protest, before me, reserving to

himself the right to extend the same at any time and place convenient.

Subscribed and sworn to before me, this ..... day of ....., 18..

Notary Public.

#### NO. 146A. MECHANICS' LIEN NOTICE.

To ....., Esquire, clerk of the city and county of New York:

Sir—Please to take notice, that I, ....., residing at No. ...., in ..... street, in ....., have a claim against ....., of ....., owner (or, contractor) amounting to the sum of ..... dollars, due to ....., (or if not due, state when it will become due), and that the claim is made for and on account of (here state the ground of claim) furnished and done before the whole work on said building was completed, and which work and materials were done and furnished within three months of the date of this notice; and that such work and materials were done and furnished in pursuance of a contract for ....., between ..... and ....., which building is owned by ....., and is situated in the ..... ward of the city of New York, on the ..... side of ..... street, and is known as No. .... The following is a diagram of said premises (here insert diagram). And that I have and claim a lien upon said house or building, and the appurtenances and lot on which the same shall stand, pursuant to the provisions of an act of the Legislature of the State of New York, entitled, “An Act to secure the payment of mechanics, laborers and persons furnishing materials towards the erection, altering or repairing of buildings in the city of New York,” passed May 5, 1863, and of the acts amending the same.

(Signature.)

(Date.)

#### No. 147. (California.) MORTGAGE FORM.

This mortgage, made the ..... day of ....., in the year ....., by A. B., of ....., mortgagor, to C. D., of ....., mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of ..... dollars, on (or before) the ..... day of ....., in the year ....., with interest thereon (or as security for the payment of an obligation, describing it, etc.).

#### No. 148. (Indiana.) A MORTGAGE.

A. B. mortgages and warrants to C. D. (describe property) to secure the repayment of (here recite the sum for which the mortgage is granted or the notes or other evidence of debt, or a description thereof, sought to be secured, also the date of the repayment).

#### No. 149. (Iowa.) MORTGAGE.

The same as deed, adding, “To be void upon condition that I pay,” etc.

## No. 150. (Oklahoma.) MORTGAGE.

Know all men by these presents, That ..... and ....., of ..... County, in the ..... of ....., part.. of the first part, have mortgaged and hereby mortgage to ....., of ..... County, ..... of ....., part.. the second part, the following described real estate and premises, situated in ..... County, Territory of Oklahoma, to wit: ....., with all the appurtenances thereto belonging, and warrant the title to the same ....., This mortgage is given to secure the principal sum of ..... dollars, with interest thereon at the rate of ..... per centum per annum, payable ..... annually, from ....., according to the terms of ..... certain promissory note, described as follows, to wit: .....

Dated this ..... day of .....

## No. 151. (Tennessee.) MORTGAGE.

I hereby convey to A. B. the following land (describe it), to be void upon condition that I pay, etc.

## No. 152. (Tennessee.) TRUST DEED.

For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date (or as may be), I hereby convey to C. D., in trust, the following property: ..... and if the note is not paid at maturity I hereby authorize C. D. to sell the property herein conveyed (state the manner, place of sale, notice, etc.), to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

## No. 153. (Utah.) MORTGAGE.

A. B., mortgagor (here insert name and residence), hereby mortgages to C. D., mortgagee (insert names and residence), for the sum of ..... dollars, the following described tract.. of land in ..... County, Utah (describe premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments in said premises, and the sum of ..... dollars, attorney's fee, in case of foreclosure.

Witness the hand of said mortgagor, this ..... day of ....., A. D. 18..

## No. 154. (Wisconsin.) MORTGAGE.

A. B., mortgagor, of ..... County, Wisconsin, hereby mortgages to C. D., mortgagee, of ..... County, Wisconsin, for the sum of ..... dollars, the following tract of land in ..... County (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, whether on note, bond or otherwise, time due, rate of interest, by and to whom payable, etc.).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of ..... dollars, attorney's fees, in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this ..... day of ....., 19..

In presence of

..... (Seal.)

..... (Seal.)

(Must be acknowledged.)

#### No. 155. (Wisconsin.) ASSIGNMENT OF MORTGAGE.

For value received, I, A. B., of ....., Wisconsin, hereby assign to C. D., of ....., Wisconsin, the within mortgage (or a certain mortgage executed to ....., by C. F. and wife, of ..... County, Wisconsin, the ..... day of ....., 19.., and recorded in the office of the register of deeds of ..... County, Wisconsin, in Vol. .... of Mortgages, on page .....), together with the ..... and indebtedness therein mentioned.

Witness my hand and seal this ..... day of ....., 19..

In presence of

..... A. B. (Seal.)

..... (Seal.)

#### No. 155A. NOTICE OF MORTGAGE SALE.

By virtue of a chattel mortgage executed by ..... to ....., dated the ..... day of ....., 190...., and filed in the office of the county clerk of the county of ....., (or, the town clerk of the town of ....., or, the register of the city and county of New York), on the ..... day of ....., 190...., and upon which default has been made, I will expose for sale at public auction, on ..... day, the ..... day of ....., 190...., at .... o'clock, in the .....noon, at ..... (designating the particular place of sale), the property mortgaged, consisting of 187 horses, 35 stages, 16 sleighs, 250 tire bolts, 800 weight of iron, 800 weight of steel, two large iron safes. (The terms of sale to be made known on the day of sale.)(b)

Dated, ....., the ..... day of ....., 190....

(Signature of attorney or auctioneer.)

#### No. 156. CHATTEL MORTGAGE FOR RESIDENT.—SHORT FORM.

Know all men by these presents, that ....., of the Town of ....., in the County of ....., and State of ....., in consideration of the sum of ..... dollars, to ..... paid by ....., of the County of ....., and State of ....., the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm, unto the said ....., and to ..... heirs and assigns, the following goods and chattels, to wit: .....

To have and to hold all and singular the said goods and chattels, unto the said mortgagee ..... herein, and ..... heirs, executors, ad-

ministrators and assigns, to ..... and their sole use, forever. And the mortgagor ..... herein, for ..... and for ..... heirs, executors and administrators, do.. hereby covenant to and with the said mortgagee..., ..... heirs, executors, administrators and assigns, that said mortgagor ..... lawfully possessed of the said goods and chattels, as of ..... own property; that the same are free from all encumbrances, and that ..... will, and ..... executors and administrators shall, warrant and defend the same to ..... the said mortgagee..., ..... heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said mortgagor..., ..... executors or administrators, shall well and truly pay unto said mortgagee..., ..... executors, administrators or assigns, ..... then this mortgage is to be void, otherwise to remain in full force and effect.

And, provided, also, that it shall be lawful for the said mortgagor..., ..... executors, administrators and assigns, to retain possession of the said goods and chattels, and at ..... own expense, to keep and use the same, until ..... or ..... executors, administrators or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor..., hereby covenant.. and agree.. that in case default shall be made in the payment of the note.. aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee..., ..... executors, administrators or assigns, shall feel ..... insecure or unsafe, or shall fear diminution, removal or waste of said property; or if the mortgagor... shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein; or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note.. and sum of money, both principal and interest, shall, at the option of the said mortgagee..., ..... executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee..., ..... executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor..., with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell, and dispose of the said property or any part thereof, at public auction, to the highest bidder, after giving ..... days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee..., ..... heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect;

and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note., rendering the surplus, if any remain, unto said mortgagor..., or ..... legal representatives.

Witness, the hand.. and seal.. of the said mortgagor., this ..... day of ....., in the year of our Lord one thousand eight hundred and ..... (Seal.)  
 ..... (Seal.)

Scaled and delivered in the presence of

.....  
 .....

State of ....., } ss.  
 County of ..... }

I, ....., a justice of the peace in the Town of ....., in and for said county, do hereby certify, that this mortgage was duly acknowledged before me by the above named ....., the mortgagor.. therein named, and entered by me this ..... day of ....., A. D. 189..

Witness my hand and seal. .... (Seal.)

Justice of the Peace.

State of ....., } ss.  
 County of ..... }

..... of said ..... County, being duly sworn, deposes and says: That ..... the lawful owner.. of the goods and chattels described in the within chattel mortgage to which this is attached, and made a part thereof; and that said goods and chattels are free and clear of all liens or incumbrances, except the said mortgage to which this paper is attached. And that there are no judgments or executions against ....., the said ....., that affect the title of said goods and chattels named in said mortgage.....

By and under the foregoing representation ..... have obtained a loan of (\$.....) ..... dollars, which said chattel mortgage is given to secure the payment thereof, and interest.

..... (Seal.)

Subscribed and sworn to before me, this ..... day of ....., 189..

.....  
 .....

#### No. 157. RELEASE OF CHATTEL MORTGAGE.

Know all men by these presents, that ....., of the County of ....., and State of ....., do hereby certify, that a certain indenture of mortgage, bearing date the ..... day of ....., A. D. 189.., made and executed by ..... of the first part to ..... of the second part, conveying certain personal property therein mentioned as security for the payment of ..... dollars and ..... cents as therein stated and recorded in the recorder's office of ..... County, in the State of ....., in Book ....., of ....., on page ....., on the ..... day of .....,

A. D. 189.....  
is, with the note.. accompanying it, and the aforementioned debt fully paid, satisfied, released, and discharged.

Witness, ..... hand.. and seal.., this ..... day of ....., A. D. 189..

Certificate follows.

No. 158. CHECK.

Chicago, Ill., ....., 189.. No. ....

THE FIRST NATIONAL BANK OF CHICAGO.

Pay to the order of ....., \$.....  
..... dollars.

No. 159. DRAFT OR INLAND BILL OF EXCHANGE.

No. .... \$..... Chicago, January 1, 1897.

Three months after date pay to the order of Thomas Smith & Co. one hundred dollars, value received, and charge to the account of

To Brown Bros., A. H. JONES.  
Centralia, Ky.

No. 160. FOREIGN BILL.

No. .... Exchange of £100. Chicago, January 1, 1897.

Six months after sight of this first of exchange (second and third unpaid), pay to the order of Mr. Don Carlos, one hundred pounds, value received, and charge the same to account of Messrs. Smith & Co. against your letter of credit No. 1.

To Mr. S. Jackson, JAMES JOHNSON.  
London, England.

No. 161. CERTIFICATE OF PROTEST.

State of ....., }  
..... County. } ss.  
..... }

Be it known, that on this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., I, ....., a notary public, duly commissioned and sworn, and residing in the ....., in said county and State, at the request of ....., went with the original ..... which is above attached, to the office of ....., and demanded ..... thereon, which was refused.....

Whereupon I, the said notary, at the request of the aforesaid, did protest, and, by these presents, do solemnly protest, as well against the ..... of said ..... the endorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred by reason of the non-..... of the said .....

And I, the said notary, do hereby certify, that, on the same day and

year above written, and within forty-eight hours from the time of such protest, due notice of the foregoing protest was put in the postoffice at ....., as follows:

Notice for .....  
 Notice for .....  
 Notice for .....  
 Notice for .....  
 Notice for .....

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

.....,  
 Notary Public.

#### No. 162. NOTICE OF PROTEST OF NOTE.

State of ....., }  
 County of ..... } ss.  
 .....

....., 189..

Sir:—

A ..... for \$......, dated ....., payable ..... signed by ....., endorsed by ....., being this day due and unpaid, and by me protested for non-payment, I hereby notify you that the payment thereof has been duly demanded, and that the holders look to you for payment, damages, interest and costs.

Done at the request of .....  
 Notary Public.

To .....  
 .....

#### No. 163. (Mississippi.) PROTEST.

Be it known that I, A. B., a justice of the peace of the County of ....., at the usual place of ..... of C. D., presented to him the bill or note of which the annexed is a copy, for payment (or acceptance) which he did not pay (or accept); whereas I did protest the said bill (or note); and immediately thereafter I deposited in the postoffice at ....., postage paid, a written notice of the protest, directed to E. F., at ....., which is his known (or usual) place of abode (or business).

Dated at ....., this ..... day of ....., A. D. ....

#### No. 164. PROTEST.

United States of America, State of New York, ss.

On the 14th day of November, 1903, at the request of Marshall Field, I, Richard Jones, notary public in and for the State of New York, duly commissioned and sworn, dwelling in said City of New York, did present the original promissory note, a copy of which is hereunto annexed, dated the fifth day of July, 1900, for one thousand dollars, to the maker, Thomas

Brown, personally, at 500 Broadway, New York City, and demanded payment, which was refused.

Wherefore I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly protest, as well against the maker and indorsers of said note, as against all others whom it may concern, for exchange, re-exchange, and all costs, damages, interest already incurred, and to be hereafter incurred, for want of payment of the same.

And I do further certify that on the 14th day of November, 1903, and after presentment aforesaid, due notice of the protest of the said note was deposited in the postoffice in the City of New York, and postage prepaid, in time for the next regular mail, addressed to Russell Sage, at Yonkers, Queens County, State of New York, which is his reputed place of residence.

In witness whereof, I have hereunto subscribed my name, and affixed my notarial seal.

Witness:

RICHARD JONES,

..... Notary Public, 50 Broadway St.,  
..... New York City.

#### COPY OF NOTE.

(Indorsed. Russell Sage.)

\$1,000.

New York, July 5, 1900.

One month after date I promise to pay Marshall Field, or order, one thousand dollars, value received.

THOMAS BROWN.

The notary generally retains the original protest, and in case of inland bills and promissory notes, an abbreviated protest, like the following, is attached to the note and returned to the party for whom it is protested: State of New York,  
City and County of New York.

Be it known that the promissory note hereunto annexed was this day protested for non-payment.

New York, Nov. 14th, 1903.

RICHARD JONES,

Witness:

Notary Public.

.....  
.....

This memorandum is attached to the note or bill, and in case action is commenced application is made to the notary for the original protest.

#### No. 165. PROMISSORY NOTE.

\$300.00.

New York, July 30, 1898.

Four years after date I promise to pay John Doe, or order, three hundred dollars, with six per cent. interest per annum, for value received.

No. 5.

THOMAS NOBODY.

#### No. 166. RECEIPT.

\$300.00.

Received, Chicago, July 1, 1898, of Thomas Smith, three hundred dollars, in full of account.

THOMAS JACKSON & CO.

No. 167. WAIVER ON BILL OR NOTE.

Presentment, demand, and notice waived.

THOMAS JONES.

No. 168. (Illinois.) NOTARY PUBLIC'S BOND.

Know all Men by these Presents, That we, ....., ....., ....., of the County of ....., in the State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this ..... day of ....., 189..

The condition of the above obligation is such, that whereas, the said ..... has been appointed notary public in and for the County of ....., residing in the ..... of .....

Now, therefore, if the said ..... shall perform and discharge all the duties required of him by law, as such notary public, to the best of his skill and ability, then this bond to be void, otherwise to remain in full force.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Approved: .....

Governor.

State of Illinois, }  
County of ..... } ss.

I, ....., hereby certify that ....., ....., ....., who are each personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this ..... day of ....., 189..

.....

No. 169. (Illinois.) NOTARIAL OATH.

State of Illinois, }  
..... County. } ss.

I, ....., do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of notary public according to the best of my ability.

Subscribed and sworn to before me, this ..... day of ....., 189..

.....

.....

N. B.—The appointee must sign both bond and oath, and return to the Secretary's office, with official signature, impression of seal (if he has one) at the place indicated, P. O. address, etc. A strict compliance with Sections 2, 4 and 7 of Chapter 99, Hurd's Revised Statutes, 1889, is required to secure the appointment of a notary public.

## No. 170. (Illinois.) NOTARIAL PETITION.

State of .....,  
 ..... County.  
 ..... of .....,  
 ....., 189..

To His Excellency,

.....,

Governor of .....

The undersigned, legal voters of the ..... of ....., in the County of ....., respectfully petition that Your Excellency will appoint ..... to be a notary public in and for said county.

Have this petition filled out and signed in ink by fifty legal voters of the city or town in which you reside.

## No. 171. (Illinois.) CLERK'S CERTIFICATE OF NOTARYSHIP.

State of Illinois, }  
 County of ..... } ss.

I, ....., Clerk of the County Court, in and for said county, do hereby certify that ....., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing was, at the time of taking such proof or acknowledgment, a notary public in and for said county, duly commissioned, sworn and acting as such, and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at ....., in ..... County, this ..... day of ....., A. D. 18.. ....., Clerk.

## No. 172. NOTARIAL REGISTER.

| Date of Demand and How | Holder | Copy of Paper | Endorsers | Date of Notice and How | Expenses |
|------------------------|--------|---------------|-----------|------------------------|----------|
|                        |        |               |           |                        |          |

## NO. 172A. NOTICE TO QUIT.

I hereby give you notice to quit and deliver up, on the ..... day of ..... next [if the current year of your tenancy expires on that day, or otherwise on the day on which the current year of your tenancy will expire, next after the end of half a year (or, of a quarter year; or, of a month) from the time of your being served with this notice],

(a) the possession of the messuage (etc., here briefly describe the property) which you now hold of me as a yearly tenant.

(Date.)

(Signature of Landlord.)

(Address to Tenant.)

No. 173. DECLARATION FOR RESTORATION TO THE PENSION  
ROLLS OF A PERSON WHOSE NAME HAS BEEN DROPPED  
UNDER THE ACT OF FEBRUARY 4, 1862.

State of ....., } ss.  
County of .....

On this ..... day of ....., A. D. one thousand eight hundred and eighty ....., personally appeared before me ....., the same being a court of record within and for the county and State aforesaid, ....., aged ..... years, who, being duly sworn according to law, makes the following declaration asking to be restored to the pension rolls; that he is the identical ..... who was pensioned on the rolls of the agency at ....., and whose pension certificate No. ...., is herewith returned; that ..he has resided, since the first day of January, A. D. 1861, as follows: 1.....  
that during this period ..... means of subsistence have been: 2....

.....  
that ..... has not borne arms against the government of the United States, or in any manner aided or abetted the rebellion, or those prosecuting the rebellion, or manifested a sympathy with the cause, but on the contrary, did, during the said rebellion, earnestly desire its suppression by force of arms; that ..he was last paid ..... pension to the ..... day of ....., 188.. 3.....  
that ..... hereby appoints ..... attorney to prosecute the above claim; that ..... residence is at No. ...., in ..... street, in the ..... of ....., County of ....., State of ....., and that ..... postoffice address is ....

(Attest.)

(Claimant's signature.)

.....  
.....

Also personally appeared ....., residing at No. ...., in ..... street, in ....., and ....., residing at No. ...., in ..... street, in ....., persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw ....., the claimant, sign ..... name (make ..... mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with ..... that ..... is the identical person ..... represents ..... self to be, and that they have no interest in the prosecution of this claim.

.....  
.....

(Signatures of witnesses.)

Sworn to and subscribed to before me, this ..... day of .....,

A. D. 188.; and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to the applicant and witnesses before swearing, including the words ....., erased, and the words ....., added; and that I have no interest, direct or indirect, in the prosecution of this claim. ....,

(Signature.)

(L. S.)

(Official Character.)

<sup>1</sup> Here name the place or places at which the applicant has resided.

<sup>2</sup> Here name the employment or other means by which a livelihood has been gained.

<sup>3</sup> Here insert, if an invalid, "and that the disability for which he was pensioned still continues in a pensionable degree, and that he has not since re-enlisted or been paid in the military, naval, or marine service of the United States;" if a widow or mother, "and she has not re-married since that date," or if re-married, give date.

#### No. 174. POWER OF ATTORNEY.

Know all men by these presents, that I, ....., of ....., in the County of ....., and State of ....., do hereby make, constitute, and appoint ....., of ....., in the County of ....., and State of ....., my true, sufficient and lawful attorney, for me and in my name, to ....., and to do and perform all necessary acts in the execution and prosecution of the aforesaid business in as full and ample a manner as I might do if I were personally present.

In witness whereof, I have hereunto set my hand and seal, the ..... day of ....., 18..

(Signature.)

Signed, sealed and delivered in presence of

.....

.....

#### No. 175. PROXY TO VOTE.

Know all men by these presents, that ....., of ....., in the State of ....., do hereby appoint ....., of ....., in the State of ....., to be ..... substitute and proxy, with power of substitution, for ..... and in ..... name ..... and behalf, to vote at any election of the ..... company, and at any meeting of the stockholders of said ..... as fully as ..... might or could were ..... personally present.

In witness whereof, ..... have hereunto set ..... hand.. and seal., the ..... day of ....., 18..

..... (Seal.)

..... (Seal.)

Signed, sealed and delivered in presence of

.....

## No. 176. PRAECIPE.

Before .....

..... }  
 vs. }  
 .....

Demand \$..... Issue summons returnable on the ..... day of  
 ....., 189.., at ..... o'clock, .... M., and give the same to constable  
 ..... Defendant at ..... Credit plaintiff with \$..... advance  
 costs. ....,

Attorney.

State of ....., { ss.  
 ..... County. }

....., being first duly sworn, on oath says that he is ....., and that  
 the demand of the plaintiff.. in the above entitled cause is for .....,  
 and the amount due to said plaintiff.. from the defendant.. in said  
 cause after allowing to said defendant.. all his just deductions, credits  
 and set off, if any, is ..... dollars and ..... cents.

Subscribed and sworn to before me, this ..... day of ....., 189..

Notary Public.

## No. 177. SUBPOENA, NOTARY PUBLIC'S.

State of Illinois, { ss. The People of the State of Illinois.  
 ..... County. }

To .....

You are hereby commanded to appear before me, a notary public in  
 and for said county, at my office, No. ...., ..... Street, in the .....,  
 in said County, on ..... the ..... day of ....., A. D. 18.., at .....  
 o'clock .... M., then and there to testify the truth in a suit now pend-  
 ing in the ..... Court of ..... County aforesaid, wherein .....,  
 plaintiff., and ....., defendant., and this you shall in no wise omit,  
 under the penalty of the law.

Given under my hand, and notarial seal, this ..... day of .....,  
 A. D. 18..

Notary Public.

## No. 178. (New Hampshire.) SUMMONS.

..... ss. To .....

L. S. You are required to appear at ....., in the County of .....,  
 on the ..... day of ....., to testify what you know relating to .....,  
 then and there to be heard, in which ..... is ..... and ..... is  
 .....

Hereof fail not, as you will answer your default under the penalties  
 prescribed by law.

Dated at ....., the ..... day of ....., .....

.....

## No. 179. WILL.

I, Thomas Smith, of the County of Kent, and State of Ohio, do make, ordain, and establish this to be my last will and testament, hereby revoking all other wills executed by me. I give and bequeath all my real and personal property unto my beloved wife, Sarah Smith, and I hereby appoint John Jones my sole executor without bonds.

In witness whereof, I have hereunto set my hand and affixed my seal, this 10th day of May, in the year of our Lord, 1898.

THOMAS SMITH. (Seal.)

The above instrument, consisting of one sheet, was at the date thereof signed, sealed and delivered by the said Thomas Smith as and for his last will and testament, in the presence of us, who at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

JONATHAN EDWARDS, Carbondale, Ohio.

HENRY JENKINS, Carbondale, Ohio.

## No. 180. WILL.

Last will and testament of James Dick, of .....

I bequeath unto my beloved wife, Sarah, all my wearing apparel, to be disposed of in such manner as she may see fit. I also bequeath to her such articles of my household goods and furniture, and such consumable supplies as may be on hand at the time of my death, as she may choose to retain for her own use; and also all the rest and residue of my personal estate, whatsoever, and wheresoever, of what nature, kind, and quality soever the same may be, and not hereinbefore given and disposed of (after paying my debts, legacies, and funeral expenses), I give and bequeath unto my said wife, Sarah, to her own use and benefit absolutely.

And I do hereby constitute and appoint my said wife, Sarah, sole executrix of this my last will and testament without bonds.

In witness whereof, I, James Dick, the testator, have to this, my will, written on one sheet, set my hand and seal, this ..... day of ....., A. D. one thousand eight hundred and .....

JAMES DICK. (L. S.)

Signed, sealed, published, and declared by the above-named James Dick, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request as witnesses thereto, in the presence of the said testator, and of each other.

C. D.

B. F.

## No. 181. WILL.

I, William Smith, of Chicago, County of Cook, and State of Illinois, declare this my last will and testament.

I will and bequeath unto my beloved wife, Mary Smith, all the personal and real property which I may die possessed of, after the payment of all my just debts.

I hereby appoint my beloved wife my sole executrix, without bond.

In witness whereof, I hereunto set my hand and seal, at Chicago, aforesaid, this sixth day of May, eighteen hundred and ninety-eight.

WILLIAM SMITH. (Seal.)

Signed, sealed, published and declared, etc., as above.

(Two witnesses.)

#### No. 181A. WILL.

Be it remembered, I, William Good, of the City of Cincinnati, Ohio, a bachelor, being of sound and disposing mind, memory and understanding, do make and declare this my last will and testament.

First—I direct that all my just debts be paid.

Second—I give and bequeath unto the Cemetery of Spring Grove the sum of two hundred dollars, to be invested and the income to be applied to the care of my family burial lot in said Cemetery.

Third—I give and bequeath unto the Old People's Home, in the City of Cincinnati, five thousand dollars, same to be invested and the income applied to the maintenance of said institution.

Fourth—I give and bequeath to my sister, Jane Thompson, the sum of five thousand dollars.

Fifth—I give and bequeath unto my brother, Joseph Good, the sum of five thousand dollars.

Sixth—I give and bequeath to the Law Library Association of Kingston, Indiana, Lots 5 and 6 in Block 4, Simmons subdivision in Section 26, township 35 N., R. 14 E. of P. M. in Bogue County, Indiana. The same to be used for building on a law and miscellaneous library for the use of residents of said city.

Seventh—I give and bequeath one thousand dollars to the purchase of books for said library.

Eighth—I give and bequeath the residue of my estate, real and personal, to such charitable purposes as my executors see fit.

Lastly, I appoint Joseph Cook, lawyer, and my brother, Joseph Good, my sole executors without bonds.

Signed, sealed, &c.

Witnessed usual way.

#### No. 182. ABSTRACT OF TITLE.

To .....

The East 10 acres of the South half of North West Quarter of Section 4, Township 39 North, Range 13 East of the 3rd Principal Meridian in Lake County, Illinois.

Note 1—From memoranda relating to sales of public lands in Lake County, Illinois, it appears that a United States patent, dated Oct. 1, 1839, was issued to C. L. Harmon and H. G. Loomis, granting the East 10 acres of Section 4 aforesaid.

Note 2—C. L. Harmon  
H. G. Loomis and  
Harriet, his wife,  
to  
J. Penfold and  
W. Penfold.  
Doc. 4,324.

Warranty Deed dated Nov. 3, 1836, recorded Nov. 7, 1836, in Book R., page 220. Consideration, \$1,600. Conveys East 10 acres Section 4 in T. 39 N. R. 13 E. of 3rd P. M., in Lake Co., Illinois.  
Acknowledged Nov. 4, 1836.

Note 3—Affidavit  
by  
E. C. Harmon.  
Doc. 494,084.

Subscribed and sworn to Sept. 10, 1883, and recorded Sept. 12, 1883, in Book 1,372, p. 205.  
Affiant states (inter alia) that he is the son of C. L. Harmon, deceased; that said C. L. Harmon died on or about Nov. 2, 1868, intestate, and that the mother of the affiant died about the year 1867; that said C. L. Harmon was never married except to the mother of this affiant.

Note 4.  
John Penfold and  
Phebe Ann Anne,  
his wife,  
Wm. Penfold and Joan,  
his wife,  
all of City, County and  
State of New York,  
to  
C. H. Duck.  
Doc. 67,699.

Deed dated Feb. 1, 1856; recorded Feb. 22, 1856, in Book 104, page 466.  
Consideration, \$4,000.

Grant, bargain, sell, etc., land in Town of Princeton, Lake Co., Ill., to wit: the East 5 acres of Section 4, in T. 39 N., R. 13 E., according to government survey, more or less.

Subject to taxes since 1852. Certificate of acknowledgment dated Feb. 12, 1856, by notary public, State of New York, states that the wives on a private examination, apart from their husbands, acknowledged, etc., but does not say contents of deed were made known to them.

Note 5.  
John Penfold  
and Phebe Ann  
his wife,  
and Wm. Penfold,  
and Joan,  
his wife,  
all of New York City,  
to  
C. H. Duck,  
of Cook Co., Ill.  
Doc. 18,284.

Deed dated Feb. 1, 1856, and recorded March 15, 1872, in Book 67, page 800.  
Consideration, \$4,000.

Grant, bargain, sell, remise, alien, convey and confirm land in Town of Princeton, Lake Co., Ill., to wit: West 5 acres of Section 4, in T. 39 N. of R. 13 East, according to government survey, more or less. First parties covenant that the above bargained premises in the quiet and peaceful possession of second party, his heirs and assigns, against all and every person or persons lawfully

claiming or to claim the whole or any part thereof, they shall and will warrant and forever defend, subject to all taxes and assessments levied or assessed on or against said premises since 1852.

Certificate of acknowledgment dated Feb. 12, 1856, by T. H. Lane, a notary public in and for New York City and County of New York, who

does not certify that said Phoebe Ann Penfold and Joan Penfold were informed of the contents of said deed.

A re-record of deed, recorded Feb. 22, 1856, as Doc. 67,699, in Book 104 of Deeds, page 466, as appears by the recorder's certificate appended to this record.

Note 6.

Charles H. Duck  
and wife  
to

Wm. S. Davison and  
Wm. J. Robertson.  
Doc. 71,188.

Quit Claim Deed dated May 21, 1856, and  
recorded May 22, 1856, in Book 114, page  
402.

Convey 3 acres of Section 4, T. 39, R.  
13 E.

Note 7—It does not appear that any proceedings have been had in the County or Probate Courts of Lake Co., Ill., in the matter of the estate of Wm. S. Davison, deceased, nor that anything in the relation thereto has been filed for record in the recorder's office of said county.

#### No. 183. APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND.

State of Illinois, } ss.  
County of Cook.

To the Judges of the Circuit Court of Cook County.

In Chancery sitting:

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

1st. Name of applicant, .....; age of applicant, .....; residence, .....; married to .....; residence .....

2d. Application made by .....

3d. Description of real estate situate in Cook County, Illinois, is as follows: .....  
Estate or interest claimed therein is in fee simple, and is ..... subject to homestead.

4th. The land is ..... occupied by ....., whose address is .....  
The estate, interest or claim of ..... occupant is that of .....

5th. Liens and incumbrances on the lands are.....  
Name of owner or holder thereof, .....; postoffice address, .....; amount of claim, \$......; recorded book ....., page .....

6th. Other person., firm or corporation having or claiming any estate, interest or claim in law or equity in possession, remainder (reversion) or expectancy in said land are .....; address .....

Character of estate, interest or claim is .....

7th. Other facts connected with said land are .....

8th. Therefore the applicant prays the court to find and declare the title or interest of the applicant in said land and decree the same, and order the Registrar of Titles to register the same, and to grant such other and further relief as shall be according to equity.

.....,  
Signature of Applicant.

Subscribed and sworn to before me by the above named .....  
as owner, this ..... day of ....., 190..

(Seal.)

.....,

Notary Public.

I hereby assent to the registration of the above described real estate  
as prayed for by ....., who is my ..... (husband or wife).

.....,

Signature of Husband or Wife.

State of Illinois, }  
County of Cook. } ss.

I, a notary public in and for said County in the State aforesaid, do  
hereby certify that ....., personally known to me to be the same person  
whose name is subscribed to the foregoing assent, appeared before me  
this day in person and acknowledged the said assent as ..... free and  
voluntary act for the uses and purposes therein set forth.

Given under my hand and seal, this ..... day of ....., A. D.  
190..

(Seal.)

.....,

Notary Public.

I hereby assent to the registration of the above described real estate  
as prayed for by ....., ....., .....

---

[The Chicago Legal News Co. and Sharp and Alleman's Lawyers'  
Directory have kindly contributed, partly, to these forms.]

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